***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-7207

## United States Court of Appeals

**For the Second Circuit**

**Docket No. 76-7207**

PRUDENTIAL OIL CORPORATION,

*Plaintiff-Appellee,*

*vs.*

PHILLIPS PETROLEUM COMPANY,

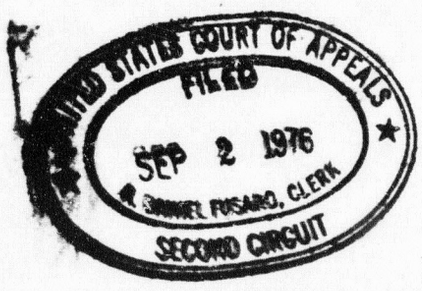
*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**(67 Civ. 3748 (C.L.B.))**

## JOINT APPENDIX

**Volume II—Trial Transcript, 1-553**




SULLIVAN & CROMWELL
*Attorneys for Defendant-Appellant*
48 Wall Street,
New York, N. Y. 10005
(212) 952-8100

GOLD, FARRELL & MARKS
*Attorneys for Plaintiff-Appellee*
595 Madison Avenue
New York, N. Y. 10022
(212) 935-9200

PAGINATION AS IN ORIGINAL COPY

## TABLE OF CONTENTS

### Volume I


PAGE

Docket Entries ..... A-1

**1. Initiation of the Action**

A. Complaint ..... A-2

B. Answer of Defendant ..... A-21

C. Stipulated Facts ..... A-30

D. Stipulated Facts with Reference to Petroleum, its Basic and Intermediate Processing, its Products and the Associated Industrial Activities ..... A-60

E. Statement of the Issues to be Tried ..... A-96

**2. Preliminary Matters**

A. Stipulation, December 19, 1967 ..... A-100

B. Answers to Defendant's Jurisdictional Interrogatories, sworn to April 26, 1971 ..... A-101

C. Opinion of Judge Edelstein Denying Defendant's Motion to Strike Plaintiff's Jury Demand ..... A-130

**3. Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction**

A. Notice of Motion by Phillips to Dismiss Action for Lack of Subject Matter Jurisdiction, April 3, 1975 ..... A-140

B. Affidavit of Robert MacCrate, April 3, 1975 .. A-141

C. Exhibits to the Affidavit of Robert MacCrate . A-153

D. Affidavit of Nathan M. Shippee in Opposition to Motion to Dismiss, April 30, 1975 ..... A-245

## Volume I

PAGE

E. Exhibits Annexed to the Affidavit of Nathan Shippee ..... A-260

F. Reply Affidavit of Robert MacCrate, sworn to May 2, 1975 ..... A-425

G. Minutes of Hearing May 2, 1975 ..... A-433

H. Supplemental Affidavit of Thomas R. Farrell, sworn to May 7, 1975 ..... A-468

I. Opinion of Judge Brieant, June 18, 1975, Denying Defendant's Motion to Dismiss ..... A-471

J. Order of Judge Brieant, July 7, 1975, Denying Defendant's Motion to Dismiss, and Certifying the Question of Subject Matter Jurisdiction for Interlocutory Review Pursuant to 28 U.S.C. § 1292(b) ..... A-491

K. Order of the United States Court of Appeals for the Second Circuit, dated August 13, 1975 A-493

**4. Trial and Post-Trial Memoranda and Orders of the District Court, and Post Trial Developments**

A. Memorandum and Order of Judge Brieant, December 30, 1975 ..... A-494

B. Memorandum and Order of Judge Brieant, March 3, 1976 ..... A-503

C. Findings of Fact and Conclusions of Law, March 3, 1976 ..... A-514

D. Judgment of Judge Brieant, March 3, 1976 ... A-522

E. Memorandum Endorsement of Judge Brieant, March 25, 1976 ..... A-525

F. Defendant's Notice of Appeal, April 23, 1976 A-526

## Volumes II-V

PAGE

**5. Trial Transcript**

A. *Testimony, January 5—January 22, 1976*

1. Nathan M. Shippee

a. Direct examination ..... 125

b. Cross examination ..... 408

c. Redirect examination ..... 540

d. Additional cross examination ..... 567

2. Edward J. Willey

a. Direct examination ..... 613

b. Cross examination ..... 661

c. Redirect examination ..... 745

3. Robert B. Anderson

a. Direct examination ..... 746

b. Cross examination ..... 771

c. Redirect examination ..... 799

4. Thomas R. Young

a. Direct examination ..... 803

b. Cross examination ..... 849

c. Redirect examination ..... 909

d. Additional cross examination ..... 948

**Volumes II-V**


| | | PAGE |
|---|---|---|
| 5. | Jesus Diaz-Hernandez | |
| | a. Direct examination | 916 |
| | b. Cross examination | 934 |
| 6. | Miller W. Conn (Deposition Testimony) | 959 |
| 7. | August Dale Fischbeck (Deposition Testimony) | 968 |
| 8. | William W. Keeler (Deposition Testimony) | 970 |
| 9. | James L. Walker | |
| | a. Direct examination | 981 |
| | b. Cross examination | 1035 |
| | c. Redirect examination | 1071 |
| | d. Additional cross examination | 1078 |
| 10. | Lawrence M. Rosenthal | |
| | a. Direct examination | 1083 |
| | b. Cross examination | 1151 |
| | c. Redirect examination | 1186 |
| | d. Additional cross examination | 1189 |
| 11. | Sam John Van Hyning, Jr. | |
| | a. Direct examination | 1261 |
| | b. Cross examination | 1321 |

## Volumes II-V


PAGE

12. August Dale Fischbeck
    a. Direct examination ..... 1345
    b. Cross examination ..... 1389

13. Thomas R. Holland
    a. Direct examination ..... 1458
    b. Cross examination ..... 1462

14. Stanley L. Learned
    a. Direct examination ..... 1475
    b. Cross examination ..... 1520

15. Leo H. Johnstone
    a. Direct examination ..... 1621
    b. Cross examination ..... 1635
    c. Redirect examination ..... 1659

16. Roy M. Waldby
    a. Direct examination ..... 1663
    b. Cross examination ..... 1707
    c. Redirect examination ..... 1756
    d. Additional cross examination ..... 1763

17. Bruce K. Brown
    a. Direct examination ..... 1765
    b. Cross examination ..... 1827

18. Joe F. Moore
    a. Direct examination ..... 1841
    b. Cross examination ..... 1877
    c. Redirect examination ..... 1902

## Volumes II-V


PAGE

19. Rodger M. Widmann
    a. Direct examination ..... 1905
    b. Cross examination ..... 1926
    c. Redirect examination ..... 1931
    d. Additional cross examination ..... 1932

20. Nathan M. Shippee (Deposition Testimony) ..... 1937

21. W. Josiah Norton (Deposition Testimony) ..... 1943

22. Oscar L. Chapman (Deposition Testimony) ..... 1974

23. Rafael Durand (Deposition Testimony) ..... 1991

24. Stanley L. Learned (Deposition Testimony) ..... 2011

25. K. S. Adams (Deposition Testimony) ..... 2014

B. *Closing Statements*
    1. For Defendant ..... 2075
    2. For Plaintiff ..... 2147

C. *Charge to the Jury* ..... 2220

D. *Answers to Special Interrogatories* ..... 2315

jks

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| PRUDENTIAL OIL CORPORATION, Plaintiff, | : | |
| vs. | : | 67 Civ. 3748 |
| PHILLIPS PETROLEUM COMPANY, Defendant. | : | |

Before:

HON. CHARLES L. BRIEANT, JR.,
District Judge.

New York, January 5, 1976;
10.10 o'clock a.m.
(Room 36)

APPEARANCES:

GOOD, FARRELL & MARKS, Esq.,
Attorneys for Plaintiff;
THOMAS R. FARRELL, Esq.,
LEONARD M. MARKS, Esq., of Counsel,
and
ABRAMS & SASSOWER, Esqs.,
BURTON M. ABRAMS, Esq., of Counsel.

SULLIVAN & CROMWELL, Esqs.,
Attorneys for Defendant;
ROBERT MacCRATE, Esq.,
DAVID RIGNEY, Esq.,
RICHARD J. UROWSKY, Esq., of Counsel.
and
DON JEMISON, Esq.,
Phillips Petroleum Company.

---

(Case called.)

THE COURT: Plaintiff ready?

MR. FARRELL: Plaintiff is ready.

MR. MacCRATE: Defendant ready, your Honor, and I would like just one very brief preliminary matter, to move the admission pro hac vice of Don Jemison of the Phillips legal department, member of the bar of the State of Oklahoma, admitted to practice before the United States District Court for the Northern and Western District of Oklahoma and to the United States Court of Appeals for the Tenth Circuit.

THE COURT: Mr. Jemison is most welcome. He will be admitted pro hac vice.

MR. MacCRATE: Thank you, your Honor.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: I noticed in some of the voir dire material that was given to me there was quite a lengthy estimate of the time the case would takei

I have a policy of not estimating length of trials and I certainly don't permit anybody to tell the jury how long they think the trial will take. However, if it is certain that we are going to be more than two weeks I will tell the jurors that and then I will have to enter-

tain their excuses, and the better the juror, the more likely he is to have an excuse.

I will entertain any suggestions counsel wish to give me. Of course, I really think we can try this case rather fast. I think that we ar4e not going to try anything that is not in dispute or not in issue. We are going to get right to the heart of it and try it. You ought to be able to do it within the two weeks that the jury panel will be here, but if it is consensus that I ought to alert the jurors, I will do so, and then I will have to hear the excuses, some of which get quite prolific.

MR. FARRELL: Your Honor, I think that it would be misleading if I told you I thought this case was going to be tried in two weeks. I think it might not go as long as some of the estimates you saw in the voir dire material, and I hope it would not, but to say that it will take two weeks and be certain of it I think would be misleading.

THE COURT: I am very serious when I tell you I will not try facts not in issue. Anything that is agreed to or which they can't reasonably dispute, you ought to say so, both attorneys should say so, and I will instruct the jury that a stipulation is equivalent to

proof.

MR. FARRELL: I quite understand, your Honor. I sympathize with that --

THE COURT: You have that view, Mr. MacCrate, that you are going to be longer than two weeks with this case?

MR. McCRATE: Your Honor, we are necessarily at the tail end. The burden of extending the trial, if that occurs, falls upon my shoulders in the jury's eyes, so that I can see that if the case goes on beyond a certain time on the plaintiff's case, and then I am left with a very brief period to put in my case, I will be the one who is extending the matter to an inconvenient time, so I --

THE COURT: I don't think that necessarily follows. My only question is whether it is really necessary to tell the panel that they might be a little longer, a few days longer. I am prepared to do that if both attorneys agree that it ought to be done. Then I will have to listen to their excuses, most of which, as I say, become quite imaginative. It is hard to say no to them because none of you want an unwilling juror.

1B jklt 1

MR. MacCRATE: I sense that it may go beyond two weeks.

THE COURT: All right

Well, then, I will alert them to that and we will have to do the best we can with the excuses.

I have another point which I wish to make. From the appearance of some of the material in the pre-trial orders, apparently the question arising under Section 1359 is intended to be tried to this jury, and I don't --

MR. FARRELL: No, your Honor, that is not our intention. I believe the issue that was intended to be covered by the pretrial order is the issue of -- not jurisdiction, but Prudential New York's standing, and therefore we have reviewed the history of the assignments of various claims simply to show that Prudential New York --

THE COURT: Aren't the facts of the making of them all stipulated to?

MR. FARRELL: Yes, they are.

THE COURT: Whether it is collusive jurisdiction is something that I ruled on after a hearing at which all of you said you did not want to have evidence taken.

MR. FARRELL: Your Honor, that's correct. I think the only reason these are in the pretrial order, and

the only reason I understand them to be in is to trace the history of the assignment to Prudential New York to show that it is the real party in interest.

THE COURT: All right. But that shouldn't take a lot of time.

MR. MacCRATE: Your Honor, the problem is that there is substantial issue as to who is making the claim, and who are the claimants, and whether Prudential New York is in fact the claimant, and there will be evidence that will be presented that will bear directly upon that question.

THE COURT: Just tell me for a moment, if you will, who you claim to be the person having proper standing is?

MR. MacCRATE: Your Honor, we frankly do not know.

THE COURT: You see, this is a 1967 case. And the question of whether they lack standing to bring it should have been resolved in the threshhold period here.

MR. MacCRATE: Your Honor, in 1965 it turns out that we have ascertained four individuals purported to divide a claim among themselves, that they were going to assert against Phillips, twenty-five percent apiece, and whether those individuals are the ones who have any claim

jklte3

or whether Prudential New York has a claim, whether a joint venture claim can be assigned and carried forward without the ratification of the other party to a new purported joint venturer such as Prudential New York, all of these matters are involved under this question of the standing of Prudential New York to sue. That is the reason for it.

THE COURT: All right. Now I might say to you gentlemen, we have a panel of sixty coming in this morning, and we will be selecting six jurors and probably four alternate jurors. Unless we run out panelists.

Now, I am willing to accommodate counsel if there is an agreement to excuse somebody, assuming that you will exercise discretion and you won't run out of the panel. I see no reason to have a complex commercial litigation decided by a juror who lacks the mental capacity to understand it, but by the same token, the Court is hard put to excuse a citizen from the panel. We are making up our panels by random selection from the voters list now and we are getting quite a cross section of humanity, and I have no basis by which I can impose an elitist standing unilaterally and say, "If you can't understand what it is all about, you can't sit."

If counsel want to agree within reason I will permit you to do so. If you find that there is a juror

jklt 4

there that no reasonable attorney would want to try a case before you may stipulate to excuse that person. Otherwise you will have the standard three peremptory, and two peremptory as to the alternates.

Now, if there is nothing further, I am prepared to send for the panel.

MR. FARRELL: I have nothing further, your Honor.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: We will be in recess until the jurors arrive.

(Court's Exhibit 1 marked.)

(Recess.)

(A jury and four alternate jurors were duly impaneled and sworn.)

THE COURT: At this time I wish to thank the rest of the members of the panel and ask you please return to Room 109.

You are excused with the thanks of the Court.

(Remaining panel of prospective jurors excused.)

THE COURT: Members of the jury, before any evidence is taken, I will give you an outline of the procedure which will be followed during the trial and also set forth some specific instructions concerning your activities as jurors which are of importance.

Following these instructions, the Clerk of the Court will show you to the jury room and it is to that room where you will return after the luncheon recesses and you will assemble directly there at the commencement of each day's proceedings.

Please try to be prompt and we will make an effort to get started on time.

Now, any umbrellas or packages or coats or hats or anything like that may be left in the jury room while the Court is in session because during that period of time the room will be kept locked. Obviously it will

not be locked when Court is not in session.

Now, as soon as we have the recess, the plaintiff's attorney will make an opening statement to you outlining his case and telling you what he expects to prove on behalf of his client. Thereafter, the defendant's attorney may make an opening statement, although he is not required to do so. The reason for this I will explain at a later time in the case, but it has to do with the burden of proof. The plaintiff has the burden to prove the allegations upon which it bases its claim to your satisfaction by a preponderance of the credible evidence.

I will explain this later in instructions which I will be giving you at the close of the case.

Opening statements are not evidence. They are merely permitted in order to assist you in understanding the evidence when it is received in the form of testimony, of witnesses or documentary exhibits or the reading of depositions, and you must not consider anything which a lawyer says either as a question or in an opening statement or in summation as being evidence except where facts have been stipulated which has the same effect as evidence.

A question is not evidence. It is the answer

ks3

which is the evidence, and the question is merely permitted in order to elicit the answer.

After the opening statements, the plaintiff will present its evidence and when it is finished, the defendant may present evidence, if it desires to do so, and if so, the plaintiff may present rebuttal evidence.

The law which applies to the case will be given to you in the form of instructions which I will mention from time to time during the trial and at the end of the trial, and it is your duty as jurors to follow my instructions on the law.

Now, if an objection is sustained, you are to disregard it and put it out of your mind and musn't draw any inference from the question as to what the answer might have been if the Court permitted the question to be answered.

If you hear an answer and the answer is ordered stricken out because it is not responsive or because it came too quickly for the ruling by the Court, again, you put it out of your mind. It has nothing to do with your function as jurors in this case. You rely only on the admissible evidence.

The attorneys not only have their right, but it is their duty to present their legal theories and you

must not draw any adverse inference against a party by reason of any objection or the ruling on any objection, and you may not concern yourselves with the reasons for any rulings I may make.

Now, when all the testimony has been received the attorneys will make their closing arguments, what is called summations, to you, and these arguments aren't evidence, they are merely arguments permitted to assist you in sorting out the issues and determining the weight and meaning of the evidence.

When the summation arguments have been concluded, I will give you the final instructions as to the law.

Now, when facts are stipulated or are set forth as conceded in a pretrial order of the Court, the stipulations and concessions have the effect of giving evidence as to something which is not disputed, and the jury shall consider any such stipulations or concessions as evidence of the truth of the facts therein contained.

Now, until this case is completed, you are to keep an open mind and you are not to reach any conclusions until all of it is before you.

Please do not read any newspaper article or listen to any news broadcast or watch any television or anything which might contain any information relating

ks5

to the case or the parties to the case or the subject matter of the case generally.

The case must be decided in accordance with the evidence and not on some kind of hearsay or inaccurate information which you might get from some other source.

Now, until it is finished, don't discuss the case with each other. Don't discuss the case. And don't discuss the case with any other persons, including members of your household, and do not visit any scene which might be mentioned in the testimony, and don't look for any information on your own.

You are to decide the case on the information you receive here in the courtroom and that is all. And if you have any problem of any kind, call it to the attention of the Clerk, and the Court will attempt to see that your service here is as enjoyable and as simple as can be made.

Now, at this time you may withdraw to the jury room. We will have a ten-minute recess.

(Jury left the courtroom.)

THE COURT: How long do you want for your opening statement, Mr. Farrell?

MR. FARRELL: Your Honor, I thought it would take about three-quarters of an hour.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: And yours, sir?

MR. MacCRATE: I fear mine will be over an hour, your Honor.

THE COURT: Well, I might have to break in the middle of it for the luncheon recess.

MR. MacCRATE: All right.

THE COURT: All right, we will be in recess.

(Recess.)

4 a.m.

jplt 1

(In open court - jury not present.)

MR. MacCRATE: Might I suggest, your Honor, that we recess for lunch at the conclusion of Mr. Farrell's opening? Would that be an acceptable alternative and then come back earlier?

THE COURT: That depends on whether I have any motions at 2 o'clock. My usual practice is to sit to about 1:30 and then resume the trial at 2:30 or thereabouts. I will see if I can do that. Maybe I can.

Now, one other thing I should have mentioned. Ordinarily I read to the jury after the openings those facts which are stipulated in the pre-trial order. These are so extensive, it occurs to me that perhaps both of you don't want that.

MR. FARRELL: What I was contemplating doing was reading the statement of facts other than the technical material which is shorter.

THE COURT: Fine, after the openings, you may read those.

MR. FARRELL: And offering at that time the exhibits that are connected with those statements and if I thought it appropriate reading some of those exhibits, not all, by any means.

I think to put a witness on without the jury

jplt 2

knowing that, is -- they would be at sea and that's why I'll do it that way.

THE COURT: I will permit you to read after the opening statements, I will permit you to read from the pre-trial order. Anything you omit to read at that time, Mr. MacCrate, if he wants to read it, I will permit him to read it. He doesn't have to. He can reserve and read it at the commencement of the defendants case.

MR. MacCRATE: Could the stipulations also be marked as an exhibit so they would be available as an exhibit?

THE COURT: Yes, where are they? The pre-trial order was docketed here on November 20th.

MR. MacCRATE: We would prepose a separate exhibit number be assigned, one to the stipulated fact without the technical matter and the other to the technical matter.

THE COURT: Are they entirely the same as the pre-trial order?

MR. MacCRATE: They are, your Honor. It is just for convenience that they are reproduced in this fashion.

THE COURT: I will permit them to be marked as a Court's exhibit of stipulated facts. The stipulated facts

jplt 3

with reference to Petroleum may be marked as Court's Exhibits 2 and 3.

(Court's Exhibits 2 and 3 marked.)

THE COURT: Are you ready to go forward?

MR. FARRELL: Yes,your Honor.

THE COURT: Bring in the jury, please.

(Jury present.)

THE COURT: Mr. Farrell, you may make an opening statement in behalf of plaintiff.

MR. FARRELL: Thank you, your Honor.

Good morning, I am Thomas Farrell and as the Judge has previously indicated to you, I am one of the attorneys representing the plaintiff, Prudential Oil Corporation. My associate is Mr. Marks and Mr. Abrams.

Now, my purpose here is to give you an outline of what it is that the plaintiff contends is its case. I am first going to start by giving you a few of the cast of characters so that you know who I am talking about as I go ahead.

The plaintiff here is Prudential Oil Corporation, which is a New York corporation. This corporation is the successor in interest, through assignments and corporate re-organizations, the details of which I will not go into here, of the original claimant who was also named Prudential

Oil Corporation and that was a Connecticut corporation.

When I use the name "Prudential," I will be talking about Prudential Connecticut, the original claimant and that was back in the years when this claim was formed and the incidents took place. If I mean Prudential New York, I will say Prudential New York. But I don't think this should be a subject that should confuse you, but I wanted to point out that there were two corporations, in fact, there was another named Prudential.

So, I am talking about the original Connecticut corporation which was formed back in the '50s, and about which you are going to hear most of the testimony.

Now, you have heard from the Judge that this was a complex commercial litigation. It is complex, I think, only because it involved a rather large project, a lot of money, a number of people and therefore there is a cast of characters who acted over a period of several years. But the issue is rather simple, I think. The issue is simply:

Whether Phillips Petroleum through a confidential relationship of joint venturer or other confidential relationship or through deceit, stole from Prudential its concepts and ideas and indeed the entire petro-chemical project which is now known as Phillips

Puerto Rico Core and is located in Puerto Rico.

Now, to get you to understand this, I think you have to put yourselves back about fifteen years. In 1960, '61, '62, unlike today, the situation was entirely different with respect to petroleum. Domestic petroleum, that is petroleum that was found within the borders of the United States was then selling at approximately $3 a barrel. Imported petroleum was selling at about $1.50 a barrel, maybe at the most, $2 a barrel. And imported petroleum was therefore, unlike today, cheaper than domestic petroleum by $1.50 a barrel.

Now, at the same time, in order to encourage exploration within the United States and in order to make the United States to some degree independent of imported oil, the Department of Interior was enforcing an oil import program. In essence, that oil import program provided that one could not import foreign oil unless one was allocated a quota by the Department of Interior. That quota, which we will return to time and time again, was the name of this game.

If you could get a quota, you had an advantage of $1 to $1.50 a barrel for every barrel of oil you were able to import into the United States, because the imported oil -- there was no tarrif on it -- once it got into the

United States or its possessions was the same. There are differences in petroleum, but the fact is you had petroleum which would cost you $3 a barrel if you had to buy it in the United States.

Now, to give you some idea of what that means, the project that we are now talking about, the one in Puerto Rico, and the proposal that we are going to talk about, the witnesses are going to talk about, was to try to get an import allocation of 50,000 barrels a day.

Now, if you take the difference in price of $1.25 per barrel and you take the number of days in a year, 365, that is a price advantage in one year of $22,800,000. That is what a quota for 50,000 barrels a day was worth. $22,800,000.

If you could bring in that 50,000 barrels each day, that was the amount of price advantage you would have over someone who was forced to use domestic oil, because he had no quota.

Now, around that time, that is, the late '50s, early '60s, there were in Puerto Rico, two oil refineries. These were what I guess you'll hear in this case called standard refineries. They imported feedstock, charge stock as it is called, oil, petroleum, crude, and they turned it into pretty much the standard petroleum products

that we all know about, gasoline, kerosene, fuel oil, that kind of thing.

One of them was rather small and it sold most of its output on the island of Puerto Rico, but the demand was not great.

The other one was a little larger and that particular project at some point made some petro-chemicals.

Now, I will tell you what petro-chemicals are, very briefly, and this will be a layman's version. You will hear more technical material on petro-chemicals, but I think if I can give it to you in the beginning, you will understand what I'm talking about.

There are a number of products made from petroleum, other than gasoline, kerosene and those types of things, that are used industrially and ultimately as consumers goods. An example would be PVC, polyvinylchloride, which is used to make phonograph records. There are types of alcohol, not the kind you can drink, but the kind you can rub, the kind you can use industrially that can be made from petro-chemicals. That type of alcohol, if it can be used and it can interchangeably with fermented alcohol in many cases is very much cheaper than fermented alcohol.

There are any number of products but I am giving you a couple of examples. The problem that plagued

Puerto Rico at that time, was that it does not have indigenous raw materials other than some agricultural raw materials. It does not have oil, iron, things like that on which you can build an industrial base.

Back during the war, the Second World War, back in 1942 and thereafter, a government agency was formed to encourage industrialization in Puerto Rico and consequently employment. This was known as the Economic Development Administration or the EDA, as you will undoubtedly hear it called in the evidence here.

EDA conceived of what it called "Operation Bootstrap," which you may have heard, which was a program to encourage, among other things, people and companies to come to Puerto Rico and start businesses, plants, whatever, and thereby increase employment in Puerto Rico.

In the early '60s, the Puerto Rican EDA considered that one way of increasing employment in Puerto Rico would be to build or encourage the building of -- because the EDA itself does not build these things, it just encourages private investors to do it. To encourage the building of a petro-chemical facility.

Now, here is an important point. The advantage of a petro-chemical facility or a petroleum standard refinery, is this:

Refined petroleum products for a large part are completed when they come out of the refinery. Oh, there is a little mixing to do and things like that and gasoline that comes out of the refinery is generally shipped and sold to the ultimate consumer, the same is true of fuel oil.

The result is that the refinery itself, other than the employees at that refinery, does not generate a particularly large amount of employment. The refineries, themselves, in addition to not providing employment after the product leaves the refinery, are also not, for the amount of capital involved, high employment enterprises. Therefore, the Puerto Rican government reasoned, or the EDA reasoned, if we can have a petro-chemical refinery facility, that petro-chemical facility will produce petro-chemicals. These petro-chemicals, however, will only be the first step in producing the ultimate consumer goods. Therefore, if we can encourage people or plants or companies to come to Puerto Rico to take advantage of the cheaper petro-chemicals that would be made by this facility, that would increase employment in Puerto Rico because the economic advantage would be that the facility would have a quota.

Now, remember the $22,800,000 a year, that's the economic advantage that that facility would enjoy.

Now, the problem with that was that the United States had import regulations. It would have been uneconomic to use domestic oil exported from the United States to Puerto Rico. Not only would it cost more, it would then have to return, because ultimately the markets for most of the consumers goods would be on the mainland of the United States.

So as the idea developed, it became clear that the first step in attempting to encourage such a facility or to realize such a facility would be that there would have to be a quota.

Now, on the other hand, the Department of Interior, which enforced the oil import regulations, was besieged, as you can imagine, by requests for quotas, and quotas were very difficult to obtain.

As a result, it appeared that unless something rather unique could be done here, there would be no quota and there would be no petrochemical facility.

The Department of Interior at that time -- the Secretary of Interior then was Mr. Udall, Stuart Udall-- had spoken to representatives of the EDA and their conversations were rather general.

Secretary Udall said he understood the problem in Puerto Rico and that he hoped something could be done

which would not conflict with the basic policy of the oil import regulations.

However, the concern was that the petroleum products which would ultimately have to be produced by the petrochemical facility would come into the United States and therefore conflict squarely with the policy of the United States in attempting to encourage domestic exploration for oil.

Petrochemicals can be produced from petroleum and a certain percentage can be produced from certain types of petroleum products, but under any system there will be a large amount of standard petroleum products. In other words, even though you have a petrochemical facility, that facility will produce substantial amounts of gasoline, kerosene and fuel oil.

So the Department of Interior was faced with a dilemma because it said, well, it would be fine if it produced petrochemicals and that was used on the island, but what is going to happen to gasoline, and obviously what is going to happen to gasoline, it is going to be shipped to the United States or dumped, as the expression went at that time; it would be dumped and it would be cheaper and those who did not have import quotas would understandably stand up and scream about whoever it was

that had this petrochemical facility having an unfair advantage over those who were dependent upon domestic oil.

So at this point a group who proposed to invest in such a facility contacted the EDA in New York and they said that they were interested in -- they used the word -- "refineries"; they were interested in investing in a refinery in Puerto Rico, and for a while they were encouraged by the EDA, at least to the extent that they talked to them and they did a preliminary prospectus and the EDA wrote them a letter, said that they would support the project, but it quickly became clear that this group was not going very far and their effort fell apart.

Now, during the time that this effort was underway, they got in touch with a man named Oscar Chapman.

Oscar Chapman was then a practicing lawyer in Washington, D.C. and a former Secretary of the Interior, and it was hoped that with his legal as well as political experience that he would be able to herd or shepherd the application through the Department of Interior for the oil import quota.

Mr. Chapman, in turn, got in touch with a friend of his who had been with him in the Department of Interior, called Bruce Brown, who was a consultant in

ks4

oil and petrochemicals, and he asked Brown what he thought of some of these proposals.

Brown said, in effect, well, you've got to have at least two conditions in order to build this facility, get your quota and build the facility.

He said first you've got to have what is known as a back to back contract with a major oil company.

By a back to back contract I mean one in which the oil company sells you the crude charge stock approved charge stock and buys back the standard petroleum products, other than the petrochemicals. That is why it is called back to back.

Brown also said you needed a contract with a chemical company, a chemical user to take your petrochemical products, and he said, in effect, that if you couldn't do it that way, you couldn't get a quota, and you couldn't finance the project. The quota, again, was more important, I think, than the financing because once you had the quota, the financing would, if not exactly follow immediately, would follow relatively easily because you would be able to go to a potential investor and say, "Hey, we have a situation here where we are able to get oil at a dollar and a quarter a barrel cheaper than anyone else with a similar facility, and therefore

ks5

it looks like we have a much more reasonable expectation of making a profit than someone who doesn't have this."

So the financing was an important part of it, but not as important as obtaining the quota, because the project would not get off the ground.

The reason for this is, of course, that if anyone had to build, or was going to build a petrochemical facility and use domestic United States oil, he would build it in the continental United States. He would not build it in Puerto Rico because Puerto Rico had attendant problems. You had a transportation problem, just to begin with, and there were other problems, both getting the product into Puerto Rico and getting it out.

So the quota was the most important, most important item.

Brown and Chapman worked with this original group which, as I told you, fell apart eventually or after some months, and this group had also asked a Mr. Coan, Jack Coan, whose name you will hear -- they had asked him to prepare a feasibility study, and he had contacted the Universal Oil Products Company, who you heard when the Judge was asking you if you knew any of these various companies, and they came up with a -- well, they had a flow sheet, as you call it, a chart -- not a flow sheet

ks6

so much as a chart of what could be produced. If you had certain types of crude charge stock, this would be the result, and what kind of installation you might need. It was rather a general document. You will see it before the end of the trial.

And at that time the original group that had brought Chapman, Coan and Brown together fell apart.

There was another effort which didn't get very far either, and now Coan, Chapman and Brown were left sort of with this thing, and in the course of their work, they had gone to the investment banking houses, among others, E. M. Warburg and Kuhn Loeb & Company, and they had been talking to them about advice for financing the project, and when the group that had brought them together had fallen apart, they went to E. M. Warburg.

Now, Mr. Brown was important not only because he was a petroleum consultant, but for another reason. He was a director of a company called Murphy Oil Company, and he had said that Murphy has some interest in this project. Murphy is not in the petrochemical business, and Murphy is not a major oil company in the sense that Phillips and Socony and Shell are, but they would be willing to enter into some kind of an agreement whereby they would take some of the product of the petrochemical project if

and when it was built, and if necessary, Murphy would invest in the petrochemical project. That was not their bag, so to speak, but if that would help it move along, that's what they would do.

Well, Brown had spoken to any number of chemical companies. As I told you, he thought the prime consideration here was to get a contract with a chemical user to take some of or all of the petrochemical product. The back to back contract with the oil companies was an important condition and you had to have it, but that, he felt, was somewhat less important than the petrochemical contract because he reasoned if you couldn't finance it you wouldn't get your quota, nothing would happen unless you had such a contract. And he spoke to the major petrochemical users, such as Monsanto Chemical, Atlas Powder -- they're just names of big corporations; you have heard them -- maybe you haven't -- but they are corporations which have a demand for petrochemicals. And he went to see a lot of them and he said, "Would you enter into a firm contract to take this product, the petrochemical product of this refinery or this facility when and if the facility is built?"

And they said no. They said, "How can we commit ourselves firmly to take this product when you don't

have anything there now but a beach and some palm trees? We have commitments that are firm with our present suppliers. We are hardly going to go to our present suppliers and get them upset and tell them we are now going to make arrangements to get the same products somewhere else and then have you flop and then where would we be?"

Well, he went around and that was pretty much what the answer was. He went to Phillips. This was not even the first time Phillips had been at least advised that this project was afoot. They had been approached back in '61 and they, at that point, as I told you, the original group was a little vague as to what it was they were going to do. Phillips said no. Phillips then entertained a further proposal from Mr. Brown. They said no. And Brown at that point said, "Well, look, I am going back to running Murphy Oil Company or taking a more active part in running Murphy Oil Company," and he left the Chapman-Coan group.

That brings us to late summer, early fall of 1962.

At that point, Coan went to Warburg, Kuhn Loeb, and they said, in effect, "Well, now, Brown has dropped out, Murphy Oil Company has dropped out. We don't even have that partial assist on the project, because they were at

least going to take some of his product. Do you have another company who would be interested in taking Brown's and Murphy's place?"

And Warburg, who knew Prudential -- now I am not talking about Prudential Connecticut, which had been formed to raise capital for exploration for gas and oil; they sell and administer shares in drilling funds -- Warburg knew Prudential; they knew Mr. Shippee, who was the chairman of the board at that time of Prudential, and they said, "Why not Prudential as a possible addition to your group?"

And Coan contacted Mr. Shippee and Mr. Willey, who was then president, and Prudential said, "Well, why us? We have our own projects, but it looks interesting."

And so they agreed after some discussions to join in the effort, and they met with Warburg and they met with the other participants and they started down the same road Brown had gone. They started to talk to the chemical companies, because they said, "We have got to have a chemical company that will take this petrochemical product."

And they were met with the same response.

So they said, "We have got to take another look at this."

And so what Prudential eventually decided to try to do and what it conceived of as a way of breaking this kind of log jam with not being able to get a petrochemical company to take your petrochemical products and yet not be able to sell the Department of Interior that you are entitled to a quota unless you can prove to them you are a bona fide petrochemical complex and not just another refinery, they said, "Well, look, why don't we try to have a more flexible facility? We will propose a facility that will make as much as much as the standard petroleum products as necessary to keep it economically viable."

Now, at that time petroleum products were not in the demand that they are today. The prices were nowhere near what they are today. But petroleum products were still easier to find a steady demand for than certain petrochemicals. And so they said, "If we have a facility that will be able to sell what the Puerto Rican Government would regard as the byproduct, that is the petroleum products, we can have a flexible facility that will increase the petrochemicals as time goes by, and as the demand increases, and we will encourage, instead of having a firm contract, to have someone come to Puerto Rico before we get started to take the petrochemical

product, we will encourate them to come -- first, we will induce them to come by showing them the advantages of founding or establishing plants in Puerto Rico," and there were advantages; there were certain tax advantages, whatever; "second, the feed streams, that is, the petrochemical feed streams that we produced because of the advantage of the quota would be less expensive that might otherwise be available, and in that way we will have a petrochemical facility that will fulfill the needs of the Puerto Rican EDA, and at the same time would not conflict with the basic policy of the import control program."

(Continued on next page.)

a.m. 1 jplt 1

Now, one of the other features that Prudential proposed, was that the petro-chemical be a quasi-public utility in the sense that it would have to provide for Puerto Rican users of petro-chemicals supplies before it could sell those supplies elsewhere or export them from the island. That, they felt, was an important consideration to persuade the Department of Interior -- again, this was not just an attempt to get an import quota and then run a regular petroleum refinery with all the benefits of cheap imported oil that that would entail.

Now, they went, as soon as they got into this and this idea that I have just told you was developing over a month or two, but when they first got into the project and decided they would go ahead with it, they contacted a man named Robert Anderson. Robert Anderson was a friend and business associate of Mr. Shippee who was the chairman of Prudential, and they both lived in the same town in Connecticut.

They went to Mr. Anderson and they asked him in effect if he would join the group that wanted to promote this refinery. He had been Secretary of the Treasury under the Eisenhower administration. He had also held sub-cabinet positions prior to his being Secretary of the Treasury but that was his last position in the Eisenhower government.

jplt 2

So, he would have then been out of government for a couple of years in '62. He said he would do what he could to encourage the refinery or the facility. As a result, a meeting was held and Mr. Anderson said, "Why don't we approach Phillips?"

Now, unbeknownst to Prudential at this time, because they knew Mr. Anderson simply as one of their associates, he had a retainer from Phillips, he was on their payroll in fact to search out new projects for Phillips. He didn't know that. He didn't find out until this suit was five years along. He said, "Well, anyway, I know the people at Phillips, Phillips is an obvious choice here because they do have petro-chemical interests as well as petroleum." He said "They don't have an east coast refinery yet. They do have outlets in Florida, Phillips Gas Stations in Florida. So, a Puerto Rican refinery or a Puerto Rican refined petroleum would be an economic benefit to Phillips because it would save them some transportation and they also have some petro-chemical interest."

He said, "I'll call them and see if they are interested."

Now, what we were talking about then, really, was just a back to back contract. To sell crude and buy back the petroleum products.

jplt 3

Within a coupleof days of Mr. Anderson's phone call, Prudential got a letter. It is attached to the complaint and I'll read it to you. It comes from Stanley Learned, the president of Phillips. It says after the address, dated November 13, 1962:

"Gentlemen: In connection with the Puerto Rican oil and petro-chemical companies, petro-chemical complex to be built in Puerto Rico, Phillips Petroleum Company is prepared to, 1, furnish 30 to 60 thousand barrels a day of crude oil for charge stock. 2. Purchase the refined petroleum products not consumed in the petro-chemical operations; 3. Counsel with you, and assist, if you wish, in the design and construction and operation of the proposed facilities.

"Whenever you desire, we shall be glad to have our representatives work with you to negotiate and complete contracts.

"Very truly yours."

This was a bit more than a simple back to back contract, because they were going to advise, counsel and assist us. The name, Puerto Rican Oil and Petro-Chemical Company was the name which tentatively was assigned to the company which would run the facility when it was built.

So, Mr. Learned had designated certain representatives of Phillips to meet with Prudential in New York.

jplt 4

The people at Prudential, Mr. Shippee and its associates and Mr. Young and Mr. Willey who you will meet as the trial goes along, went down and met with Phillips.

In about January of '63, as these meetings were going along, Prudential prepared a brochure, a loose-leaf notebook it looked like, in which it outlined its ideas. The ideas that I have just outlined about the quasi-public utility and the encouragement, calling the facility a "core plant," a core plant to attract satellite petro-chemical plants.

They showed this brochure to the Phillips people with whom they were meeting. One of the people that they were meeting with was a Mr. Fishbeck, who was an employee of Phillips. As time went on it was proposed that Mr. Fishbeck be an officer of the new corporation that run the facility. In the brochure he was listed as a vice president.

Now, I want you to understand the importance of this, because we were meeting at that point with Phillips who was counseling with us, assisting us and we proposed that Mr. Fishbeck become an officer of the new corporation which would run the facility. Now, Mr. Fishbeck didn't say no to that. As a matter of fact, he took the brochure, made some changes, including some changes in his little resume.

jplt 5

It said "Mr. August Dale Fishbeck," and gave his background. He crossed them out and put some new stuff -- he would never say he would do that. They continued to meet.

Well, in about March of 1963, two high officers of Phillips went to see the Department of Interior. We didn't know that either until the suit was started and the testimony now is -- has been changed. Originally when we questioned the then chairman of the executive committee of Phillips, he said he had been to the Department of Interior on this Puerto Rican project in March,'63 and he now has said that that's not true. He has refreshed his recollection and it was something else. He was going to make a different kind of presentation.

The fact is, when asked, he testified that that's the reason he went to Washington, for this project or a Puerto Rican petro-chemical project. We had then come to the conclusion or it became clearer and clearer that the application for the oil import quota would probably not be successful if it were made in the name of either this Puerto Rican Oil and Petro-Chemical which was known for short as Propco or in the name of Prudential, because the regulations provided certain requirements in order to grant import quotas, and one of them was you could get an exception according to Mr. Chapman, if you had an importing

history and Prudential did not have such a history and neither did this new corporation, it would not have one.

So, it was proposed to Phillips that they would have to be the one to put -- they would have to apply for the quota, because the project at this point would be stalled, unless they applied.

Well, at that point more strange things happened. We had thought that Mr. Fishbeck was also going to prepare for us certain marketing studies which we all agreed should be in the brochure. This brochure would ultimately be presented to both the EDA, the Puerto Rican EDA, and to the Department of Interior in support of the quota application.

We understood that he was doing them when we had prepared -- we continued to make corrections to our brochure. In fact, what had happened was Phillips, through Mr. Keeler, the chairman of its executive committee at that time, told Mr. Chapman in Washington that Phillips was not interested in proceeding with this project unless Prudential or Propco or somebody else got the quota.

Well, I think since Mr. Keeler spoke to Mr. Chapman, he must have known what the result of that would be. It would mean there wouldn't be any quota at that time.

We didn't hear about this until some time

jplt 7

later. In fact, after this conversation took place, Mr. Chapman wrote to us or his secretary wrote to us and said that he was very pleased with the progress -- he had been ill at that point -- but in late April or early May, we were notified by Mr. Fishbeck there must have been some confusion and he wasn't going to do these marketing studies and they were not interested unless we got the quota. So, we said this would require some kind of an effort to pull these pieces together again and so a meeting was held in July, July 2nd. The date will stand out for a reason. 1963. In Mr. Anderson's office.

Mr. Chapman was there, although he now says he wasn't. But he said he was when first questioned about it. Mr. Anderson was there, Mr. Shippee was there and there were a couple of other people from Prudential.

At that meeting it was decided roughly that Anderson would again try to talk to Phillips, getting them to become interested again and Mr. Chapman, who had heard the application, once that happened and heard the application through, in Washington. In effect, we had at this time prepared our final brochure. This was done on a date in June. I think we sent copies to Chapman in late May, May 30th, I think, it was dated June, '63.

We sent that to Chapman and in effect until

Mr. Anderson and Mr. Chapman could pull some of these pieces together, there was not much we could do on the main project. We would have to turn then and see if we could encourage satellite plants.

Well, the next day Mr. Shippee was in an airplane crash and he was badly hurt but not hospitalized for a great length of time but he was, for that summer, not feeling terribly well as you might imagine. There were a lot of people killed in that crash. He was one of the few lucky enough to escape.

He was told, as things went along, that everything was under control, that Mr. Chapman was talking to the Phillips people, Anderson was talking to the Phillips people and to the extent that Mr. Shippee became involved in the project at all, he was considering talking to potential investors in satellites.

In other words, once the core got built, "Would you be interested in financing a satellite?"

In about August of 1964 and these details were not known to us at the time, except in general reports, everything is going all right and we're talking to them. But they were not precise. In August of 1964 Chapman spoke to Mr. Learned, president of Phillips, and he said there was, he thought a chance of getting a quota. There was a

jplt 9

meeting in Washington between Chapman and Mr. Conn, who you may meet here and another man from Mr. Chapman's office in Washington. At that point Mr. Chapman gave to Mr. Conn-- I'm sorry, August '63, it's been pointed out. I said '64. I'm talking about '63.

Within a month or so from the meeting in July of '63. And what happened was, Mr. Chapman gave to Mr. Conn the latest brochure that we had sent to Mr. Chapman in May. Mr. Conn took it and it went to Phillips. Phillips had not seen that particular edition of the brochure. They had seen the earlier one and that was the one that was corrected by Mr. Fishbeck and our copy was given back.

But Mr. Chapman gave Mr. Conn the latest effort of Prudential. Phillips was then working on the application, we thought, in conjunction with us, and they copied it. They copied some of the brochure.

In November of 1973 came the assasination of President Kennedy. Well, this had an effect on the project. Up until then it was thought that the Kennedy administration was somewhat more hard-nosed about import quotas than the Johnson administration would be, but on the other hand, the Kennedy people that had been talked to and in other words Mr. Udall knew this particular proposal and there was some consternation at least on the part of some of the people as

to what would be the fate of the import application.

On the other hand, Mr. Anderson became quite more important because Mr. Anderson was from Texas and was quite friendly with President Johnson. It was thought that he would be of immense help in the event this import quota had to be shepherded beyond the Interior Department. I think only the President, in fact, could have awarded this quota because of the change in the regulations. This was a procedural matter and I'm not going into the details, but the point was, the President would have to ultimately sign it and it would be upon recommendation of the Department of Interior.

So, at that point the decision was made, not by us, to file for the import quota. Phillips, in January 1964, in its own name, filed for an import quota. We had continued to work on the satellites that we hoped to attract to the petro-chemical facility and Mr. Conn reported to us Mr. Shippee would have lunch with Mr. Conn and that everything was under control.

In January of '64, a Mr. Waldby, who was an employee, an officer, I think, of Phillips, gave to the EDA a brochure, ostensibly prepared by Phillips -- prepared by Phillips in the sense that there was some material in it that they had done and it had verbatim quotes from our

jplt 11

brochure and it had been given from Mr. Chapman to Mr. Conn in August of 1963. There were not only verbatim quotes, but there were a number of other slightly changed sentences and paragraphs. There was no question that this was based upon or copied from the item that we had given to Mr. Chapman and Mr. Chapman had given to Mr. Conn.

There was thereafter realized by Mr. Waldby and by a functionary at the EDA and by April of '64 it had changed somewhat. But as we will point out as the case goes along, you can trace it was our proposals that were basically at the bottom of this document.

In July of 1964 the Department of Interior held hearings on the application by Phillips for an import quota. Well, as I say, you can imagine the hullabaloo that had been raised by the other oil companies. Here was Phillips about to get a gift they would say, a license to steal they would probably even say, amounting to $22,000,000 a year. They were not terribly impressed about how Phillips was going to aid Puerto Rican employment. They were much more impressed with the cheap gasoline that was going to come in from Puerto Rico.

So, at that point it was a very near thing as to whether or not this allocation was going to be granted. There was a lot of opposition. The opposition continued.

jplt 12

Now, what happened was, at that point Mr. Durand, who was the chairman, or the administrator of the EDA, the head of EDA was going to testify before the Oil Import Quota Board in favor of the granting of the allocation, granting of the quota, on the ground that it would assist Puerto Rico's economy, the construction of such a facility and the encouragement of such satellites would increase employment in Puerto Rico and therefore this was not a standard refinery and it was not a proposal that would conflict with the basic policy of the Oil Import Quota regulations. And at that point at Mr. Shippee's suggestion, Mr. Shippee of Prudential, Mr. Anderson went to Washington to speak to Mr. Durand concerning his testimony.

Now, Mr. Durand says they talked about something else. Mr. Durand, whom you will hear, said they talked about his testimony and that was one of the reasons he met with him. Mr. Durand later then testified.

In the latter part of '64, when there had been more work on the satellites but the matter was pending before the Oil Import Board, Mr. Willey of Prudential, who has a perhaps suspicious nature, said "You know, maybe Phillips doesn't understand that this is our project and they seem now to be running the show."

jplt 13

Mr. Shippee was not concerned or as concerned, but in any event through an associate of Mr. Anderson, they made an appointment to see Mr. Learned out in Bartlesville, Oklahoma.

They saw Mr. Learned, not a great deal from Mr. Willey's point of view was accomplished at that meeting because the subject was satellite plants and Mr. Shippee had been talking about that with his associates and so that was a conversation that he was glad to get into with Learned, but Mr. Willey came away feeling that nobody had really told anybody the bottom line, which, you know, Mr. Learned, this was our project and we were in from the beginning and this quota, if we get it, will be a joint quota and not Phillips' quota and that we are sharing in this quota and that was what it was from the beginning.

So Mr. Willey made another appointment to see Mr. Learned, a month or two later. No problem in getting this appointment. He called him up and Mr. Learned said "Come out and see me."

Mr. Willey spoke more directly to Mr. Learned. Mr. Learned at that point, he didn't deny Willey's contention that Prudential had an interest in this venture to get the quota, but he didn't admit it, and he left it -- Willey felt better when he left, but there was no

acknowledgement admittedly by Phillips.

At that point or around that time, the Secretary of the Interior had announced that he was going to recommend that the quota be granted. This is in early 1965 and he said "We'll get into some serious negotiations with Phillips and we will proceed down those lines if they can satisfy us with certain conditions, in effect they will get the quota."

Well, at that point it was pretty much downhill. The main fight had been won. There were some skirmishes, but the main fight had been won.

The Secretary of Interior had committed himself publicly to recommend a quota for Phillips for this project. At that point Mr. Learned and Mr. Adams, who was the chairman of the board at Phillips, came to Mr. Anderson's office in New York and said to Mr. Anderson, "We're working separately from now on. We're going to act independently," meaning that Prudential was not going to have any part of this quota or the petro-chemical complex or anything else.

Anderson didn't tell us that Mr. Adams and Mr. Learned had said that and for a while we continued to work on the satellites.

At that point it became quite clear from the reception we were getting from Phillips, that they were not going to acknowledge any contribution, any joint venture or

jplt 15

any part that we played in getting this quota. So, Mr. Anderson attempted to make peace.

There were proposals that perhaps Phillips would finance a satellite for us and that we wanted to have them do anyway because we could share in a satellite plan as well as in the core complex. But Mr. Anderson began to view it, Mr. Shippee did too, as perhaps a way of resolving this thing if push comes to shove, if it is not terribly satisfactory, we explained an interest in the core and in the oil import allocation, but after all, little companies have tough times sometimes fighting with big companies, so maybe this is a way of resolving the thing.

That was proceeded on for some months. But nothing really happened and until the talks went on until '66, maybe even early '67, but nothing was accomplished.

Phillips denied that Prudential had contributed anything. They denied that there was ever a joint venture and they denied the had any obligation whatever to Prudential. Thereupon, after reaching an agreement with the Department of Interior, and after the President had signed the appropriate regulation, they proceeded on the basis that they were the sole owners to take advantage of the import quota and to build a petro-chemical facility from which the profits had been tens of millions of dollars.

In September of 1967 we started this lawsuit. It has been a long, hard fight and we are here today. It is now 1976. It's been a long time. We are going to prove to you all of these things that I have just told you. Either they are stipulated in some cases or I have the documents or the witness is going to tell you on the stand.

I ask you to try to remember what I have told you, because I wanted to give you that background so you would understand what the point was that the witness would be driving at. That essentially is the story of why we are here today.

I will be talking to you at the close of the trial about the evidence that we introduced, but at the moment that's all I have and I just ask you to follow the evidence as it comes in.

THE COURT: Members of the jury, at this time I will recess for lunch. Don't discuss the case; keep an open mind. Please return at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(2.00 p.m.)

(Jury present.)

THE COURT: Mr.MacCrate, you may make your opening statement on behalf of the defendant.

MR. MacCRATE: Ladies and gentlemen of the jury, it now becomes the defendant's turn, Phillips Petroleum Company, to help you to understand what we see as the facts of the case and the issues that are presented, and you will find it is a quite different story, as you would expect, because there is a dispute between us.

But I will attempt to outline for you how we view the case.

Now, unfortunately, my two colleagues, David Rigney, who was sitting here and will be back, and Richard Urowsky, who was sitting here, were taken --

THE COURT: Excuse me just a moment.

Will counsel approach the bench?

(At bench.)

THE COURT: I must confess, Mr. MacCrate, I didn't even notice their absence. The clerk had told me everybody was ready. If you want to wait for them, I will take a recess till they get here.

MR. MacCRATE: They are on the telephone in

connection with the exhibits. They marked right through the lunch hour.

THE COURT: Does it have anything to do with the opening statement?

MR. MacCRATE: No, it does not. I will just simply explain they are attending to a mechanical matter.

THE COURT: I would have given you a continuance.

All right, let's go forward.

(Open court.)

MR. MacCRATE: I was about to explain that Mr. Rigney and Mr. Urowsky were out of the room attending to some administrative matters relating to the case and would be back. Mr. Rigney has returned. Mr. Urowsky will be here. And then Mr. Don Jemison who is from the Phillips legal department in Oklahoma. The three of us on this side are New York lawyers, and Mr. Jemison is a lawyer from Oklahoma.

Now, the one thing that must have struck you as you listened to an explanation of this case is how stale the claim is.

The central events took place in 1962, in 1963. Here we sit in 1976, 13 or 14 years later.

The plaintiff corporation didn't even exist in

1962 and '63. It was formed only in 1966, when Mr. Shippee, to whom Mr. Farrell referred, and his secretary, Miss Morel, formed a New York corporation. The events were already stale and the circumstances already substantially changed when the complaint was filed in September of 1967.

Mr. Farrell has referred to how much the events have changed in the intervening years. Soon after the case was begun, early in 1968, the plaintiff appeared to have abandoned the case. Nothing happened. And it was only when the Court, finding that nothing was happening in the case, called in the parties at the end of 1969 that any further steps were taken in this case.

Thereafter it was not until June of 1970, which is seven to eight years after the central events, that plaintiff asked Phillips any questions about the actual facts of the case.

Now, this can be done in a lawsuit in what we lawyers call, as most of you know, I am sure, pretrial discovery, and You can do it either by written questions that you give to the other side or you do it by getting a witness, giving notice and getting a witness to come and testify without the Court and the jury, but under oath, in very much the same way.

Now, it was not until June of 1970 that any written questions were propounded by the plaintiff to Phillips, and it was not until February of 1972, nine and ten years after the events, that any questions were put on oral examination to the Phillips people.

Now, there was a reference by Mr. Farrell to the fact that a witness refreshed his recollection and found that a particular meeting in March of 1963 did not have anything to do with Puerto Rico but related to a presentation on the natural gas industry in the United States that was made by these Phillips officials in Washington. They weren't there for any purpose related to Puerto Rico.

Now, I just cite that as the kind of difficulty that one runs into when you are presented with a case that is so old as this.

Witnesses -- the first time they were questioned -- were being asked to recall events nine and ten years earlier, now 13 and 14 years ago. Dead and dispersed files -- those that still existed had to be located and searched to respond to requests for documents. We had trouble finding documents. There may be complaints about that. But it is not an easy thing to do.

But behind this delay, this what I would describe as a slow shuffle to trial, lie some highly significant aspects of the case. I am sure of one thing, that it has made your task as the triers of the fact that much more difficult, but it relates also, I submit, to the bogus quality of the claim and to the confusion over who, if anyone, had a claim to assert.

There was a general atmosphere here, "Let's wait and see how Phillips makes out. If it succeeds, well, let's say it is ours."

Mr. Farrell has passed far too quickly over the question of who really asserting this claim.

As we have noted, Prudential New York did not come into existence until 1966. Prudential New York is owned by another corporation, and ultimately by some stockholders who are strangers in some respects to any aspect of this claim.

The proofs will show that back in 1965, four individuals were talking privately about whether they could make a claim against Phillips and what share each would claim. Phillips didn't know this. But they decided among themselves that they each had a 25 per cent claim.

Now, four individuals -- their names have been

mentioned but there wasn't a word about this -- they are Nathan Shippee, Mr. Willey -- Mr. Willey spells his name with two l's, W-i-l-l-e-y -- Mr. Anderson and Mr. Wright.

Now, you have Mr. Shippee and Mr. Willey in this drilling fund business together from 1959. You have, on the other hand, Mr. Anderson and Mr. Wright in shared offices in the same building here in New York, and Mr. Shippee and Mr. Anderson, perhaps some of the others, lived in Greenwich, Connecticut, and came to know each other there, and these four friends formed Heritage Corporation in 1962, and for a while Heritage Corporation owned shares of Prudential Connecticut.

They were also involved together in a proposed real estate investment in Hazleton, Pennsylvania, in 1962.

Now, three years later, with this longstanding relationship among them, they decided that they would assert a 25 per cent interest in any claim against Phillips, each one would have 25 per cent. But a dispute seems to have arisen as to how they would divvy up such a claim.

Now, Anderson, who had been playing both sides of the street, he had a retainer. He is a lawyer and he was retained by Phillips. He decided that he couldn't possibly assert any claim against Phillips. He had, in

fact, been handsomely paid for any services he had rendered to Phillips.

Willey had already dropped out of Prudential Connecticut, both as a stockholder and officer during 1964. He had sold his shares to Mr. Shippee, but he nonetheless, in 1965, said he wanted a 25 per cent share of any claim.

But by 1966 Mr. Shippee and Mr. Willey were talking about what that share should be, and we find in the fall of 1966 that Willey is suggesting, well, if not 25, let me have 20.

Mr. Shippee was suggesting it ought to be 15 per cent.

But I point out these aspects and the curious situation of Mr. Wright and his attitude, that he had had nothing to do with this whole activity that had gone on in the preceding years, that when the complaint was filed and they finally got around to filing a complaint, it was filed alone by Prudential New York, a New York corporation, and we are told that Phillips Petroleum had a joint venture with someone and misappropriated property from someone.

Now, whose stale claims are being asserted?

But there is a further question. Against whom

does any claim exist?

In 1965 Mr. Shippee apparently looked to Mr. Anderson -- these are Mr. Shippee's words -- to take care of us -- us being Mr. Shippee, Mr. Willey and Mr. Wright.

This is what Mr. Shippee wrote on a document that will be here.

Now, although Phillips never knew it was paying Mr. Anderson for any services relating to Puerto Rico, the fact is that Phillips paid him more than $200,000 for his professional services, and in the years 1962 to 1965 paid $200,000.

Now, if he were claiming that amount for what he did in conjunction with Mr. Shippee, through Mr. Willey and Mr. Wright, if they were deceived, it was Mr. Anderson, not Phillips, who deceived them and is the deceiver. He was their partner. He was their co-participant. And Phillips appears to have been deceived the most, if anyone was here deceived.

If there is a claim that they wish to assert, they should be off dealing with Mr. Anderson.

Now, at first Mr. Shippee and Mr. Willey even proposed to sue Oscar Chapman, but apparently Anderson seems to have convinced them to drop that or perhaps realizing that they had never paid one cent to Mr. Chapman, never

retained him as counsel, they concluded that it would be an awfully hard case to assert.

In the end, it only came against Phillips who was, in fact, a total stranger to all of this inner circle debate that had been going on.

So in addition to the question of whose stale claims are being asserted, we have the question of against whom does any such claim exist?

Now, there are further central questions to which Mr. Farrell has alluded, whether there was ever an agreement of joint venture to which Phillips was a party and whether Phillips misappropriated anything.

Now, to understand these questions I am going to attempt to share with you something more about the background of this case than Mr. Farrell has seen fit to do.

Let me begin by inviting your attention to the stipulated facts to which, in due course, the Court will refer.

The stipulated facts are in two sections. One contains a chronology of the facts that are agreed upon between the parties. The other contains business information, industrial information about petroleum, petrochemicals and the different processes by which crude

oil is changed and becomes all of the different end products which are there explained.

Now, there are only a few basic facts, but I think we have to hold up a few of the facts with which many of you are acquainted, I am sure, with respect to the oil and petroleum business. But an understanding of rhese will aid a great deal, I believe, as you listen to the witnesses to know of what they are speaking.

Now, let us start with the petroleum as it comes out of the ground which, as you know, we call crude or crude oil. It is a mixture of literally thousands of different compounds. It contains a range of things within it than can be drawn out and extracted that range from very light gases to semi-solids, such as asphalt which we put on the road or paraffin wax.

Now, the specific content of the crude oil varies from oil field to oil field. For example, you may find a high wax content in one field there to be extracted, and in another field literally or virtually no wax at all.

Now, the content of the crude oil affects both how it can be processed and what end products can be derived from particular crude oil.

Now, a word about the processings. There are four basic processes that are generally described or categories of processes. You will hear reference to refining operations, one; two, petro-chemical operations; three, primary chemical processing, and, four, secondary chemical processing:

Refining, petrochemicals, chemical 1, chemical 2.

Now, while these processes are sometimes continuous -- and bear in mind, the interesting aspect of petroleum and its processing, you never see it if the plant is working well. It goes from one container to another through pipes. But the whole passage is within a plant on such continuous bases that it sometimes is difficult to say where refining operations end and where petrochemical operations begin.

But there is an important and crucial distinction for this case between a refinery, on the one hand, and a petrochemical facility on the other.

What Phillips has built in Puerto Rico is a petrochemical facility.

Now, the refinery begins with crude oil. The petrochemical facility begins with a portion, only a portion of the products of a refinery after the crude oil has

bslt 2

initially gone through the refinery.

Now, you have heard in a very general way that there were successive attempts to develope a product which would meet the requirements of the Puerto Rican government. Only the Phillips product did.

Each of the earlier proposals started with crude oil as its stock. Phillips in contrast started with what are described as unfinished oils or naphtha, which is a product of the refining operations.

Think for a moment, if you will, of the palm of your hand as a refining operation, and the crude as coming into that refining operation through your wrist. Then after the processing, think of your fingers as the product streams going out from the refining operation. You have very light substances going out through your thumb, such as gasoline. You have very heavy substances such as fuel oil going out through your little finger. Then if you move up the scale to your ring finger, you might have what are called gas oils coming out through there. As you move up to your middle finger, you would have still lighter, which would be kerosene, and finally you come to the index finger, through which the unfinished oils or naphtha would go out.

And so what we are saying is that in the Phillips example, you take what comes out of a refinery

bslt 3

through one stream and you build a petrochemical facility based upon that stream.

Now, just as a refinery takes crude stream and divides it into different streams, so a petrochemical facility, drawing off of one stream, would have another break down so that you would have various product streams going out from it in addition. And as you go from your petrochemical facility so your primary chemical, to your secondary chemical processing, these fingers keep multiplying and the number of products that you can produce become extraordinary, and it is that variety that the person who is designing a petrochemical plant has to have in mind. There has to be a coordinated plan to decide just what will be produced and the selection made.

There isn't a facility in the world that makes all of those things out at the end. There is a selection that is made based upon very simple problem that anyone has who wants to sell anything: What can I sell? and until you have established a way that you can reasonably expect to market everything that is going to be produced, you cannot possibly design your plant; you can't put something together that is going to take the feedstock that comes in and produce the right products which can then find their way to market.

bslt 4

In short, you just can't leave it to chance nor postpone your decisions when you build a multi-million dollar plant. You must have at least the initial market very much in mind, and how you are going to dispose of everything that comes out of that plant. The whole question of whether you can meet your payrolls and all the other expenses depends upon being able to sell all of the product. You don't build a plant to throw away some part of it.

Now, just to give one final focus on this. The end products of petroleum we all know about, but we sometimes forget. But this again shows, this tremendous variety of things that are coming out of the ultimate processing; you have, of course, fuel and lubricants of all kinds. Some of that will come right out from the refinery, it is not sent through any further processing. You have what we call heat workable plastics, phonograph records, plastic toys, vinyl flooring, automobile upholstery.

You have another kind, heat resistant plastic. Parts of electrical appliances, the handle on a pot, the electrical switches -- these are all heat resistants, taking different content.

You have all the synthetic rubbers for the feet, for automobiles and buses. You have nylon, polyester fibers and those other things that are woven up to make cloth. Again, it is made out of this whole chain of processes

bslt 5

You have industrial chemicals such as the kind Mr. Farrell was referring to earlier. You have agricultural chemicals, pesticides and fertilizer of all kinds. You have drugs, cosmetics, detergents that we wash with, paints, dyes, finishes.

You see what you're planning when you put a plant of this sort together?

Now, I will put to one side that technical information, but I think you will find it helpful as bearing upon the facts that are developed, and to the extent that there is occasion to go into any aspect of this further, it will be a part of the record in this case.

Now, as Mr. Farrell has said, you need to have some facts with respect to oil imports and oil import quotas.

He has referred to the import restrictions, you see. Quota allocations were made each year to importers and for the reasons that he has indicated, an import permit could be valuable to allow you to bring in cheaper foreign oil, at least as the circumstances existed away back when, then domestic oil produced here in the United States was available for. But even in this case, as has been noticed, changed circumstances completely alter the attractiveness of import permits, let alone whether you even need them for any purpose.

bslt 6

The history of the past thirteen to fourteen years, which is the time span we are called upon to deal with today, demonstrates how completely unpredictable are future markets and future government policy, which is the very basis for the regulation of oil imports back in 1961-1962. And it indicates, I suggest, how irrational it is to treat an oil import allocation for a particular year as having any assured value, let alone any value in some future years.

The usefulness of an oil import quota is determined by the situation at the particular time. It may be useful yesterday; a change in government policy or oil prices or supply can make it useless tomorrow. But in this case there is something even more important than that.

The oil import allocation that was finally secured for Puerto Rico that we are talking about here was not for crude oil, but for unfinished oils to be brought in for a petrochemical facility. And it was upon the commitment of Phillips to the Puerto Rican government in a written contract that it would invest millions of additional dollars, $55,000,000 was to be invested over and above what was necessary to install this plant, and all profits for ten years were to be put into satellite facilities.

Now, an oil quota that is conditioned with

bsl.t 7

all of this is not the kind of oil quota that was being talked about, and I'm afraid that in the testimony you will hear this point may be lost, but bear in mind, the very special kind of import authorization that Phillips obtained, directed as it is to this Puerto Rican facility.

It was no end in itself. This wasn't Phillips' purpose. It was for a specific use only:

To put a whole project together that would serve the Puerto Rican purpose and would allow the Phillips to have the benefits that it hoped to get from such a project. But only when it met what Puerto Rico felt was essential to it.

Now, Mr. Farrell has indicated that you just had to have foreign oil for a facility in Puerto Rico -- it just didn't make sense to take any feedstock from the mainland and carry it out on tankers to Puerto Rico, process it there and take it back and sell that product in competition with the product that was processed right on the mainland. You were adding all that transportation cost. And with the problem that Puerto Rico had in trying to take the country, the Commonwealth, and to bring it along with the creation of jobs and have various types of facilities there. It was recommended that the only place that you could look for the kinds of raw materials that in the end

bslt 8

make all of these end products that we were talking about, is if you had some such facility as this, and it is with the efforts of the Puerto Rican government that this story begins.

It wasn't Phillips. It wasn't Prudential. It wasn't any of the others who were directing themselves to this problem. The Puerto Rican government, in what they called "Operation Bootstrap," which they started in 1942, was intent upon doing something of this kind. And what they were looking for was someone who would and could develope a feasible program that would satisfy their requirements as well as the requirements of the United States government.

Now, there were a number of potential sponsors over the period of years we are talking about, and there was not one company that came forward with a proposal that could provide what the Puerto Rican authorities thought was necessary other than Phillips, and the proposal that they advanced.

Now, we will consider those factors as we trace some of this story that has already been shared with you. The most remarkable suggestion that has been made is that either Mr. Shippee or Propco Group or any ofthe people associated with them, conceived of the core

concept or of a quasi-public utility.

This approaches a claim that you and I, when we -- put a wheel on a wagon invented the wheel. The core concept, the public utility concept is fundamental to industrial development. It is what Operation Bootstrap was all about. Core Industries were a special objective of EDA. They wanted the core industry to cluster around and to create the jobs, that's what they were trying to do from the very beginning.

During the 1950s the administrator of EDA, Teadoro Moscoso, he identified such things as slaughter houses and flour and feed mills and petrochemical plants as core industries they wanted to bring to Puerto Rico for just these purposes.

During the 1950s the economic feasibility of a petrochemical complex for Puerto Rico was extensively studied by EDA and how such a core facility could attract satellite industry and jobs for Puerto Rican workers.

It was because EDA wanted a core industry that it began its efforts during 1961 to open up the federal government's import program with respect to Puerto Rico. Without these indigenous raw materials that Puerto Rico needed, it just couldn't bring the new industry that it was seeking.

bblt 10

Now, you will hear testimony from Mr. Van Hyning, the petroleum expert of EDA regarding these matters. Mr. Farrell dismissed him as an "EDA functionary." He is a Rhodes scholar and a very significant and knowledgable person in EDA in evaluating what it was that Puerto Rico needed.

You will hear testimony as well from Mr. Brown, to whom Mr. Farrell referred. Mr. Brown is someone who saw what this was all about and he tried ever so hard to put it together in the spring of 1962. There had been an effort in the fall of 1961, you see, Jack Coan -- his name was mentioned -- is the name that figures right through this, and Jack Coan visited Oscar Chapman, the Washington lawyer, at the end of 1961 and Mr.Chapman said "We need someone like Bruce Brown who knows this industry through and through to help us see what would work here."

One method already common in the industry, which Mr. Brown identified, was for an intergrated oil and petrochemical company, such as Phillips, to sponsor such a project. Employing its already developed resources of supply, established markets, it had the basis for going into such a project. This is precisely what Phillips ultimately did. Drawing upon its own rich experience in the field, its technical resources, both in oil and in petrochemicals.

bslt 11

To suggest that a banker, Mr. Shippee, and his group, had to show Phillips how to put a core petrochemic. facility together is like, well, someone offering you a road map to find your way home from the drugstore, and then not even showing you the route.

One of the reasons Phillips said no -- and Phillips did say no to Mr. Brown and Mr.Chapman and Mr. Coan in June of 1962 -- was that they were offering Phillips a joint role with them in a project that Phillips knew if other factors from its internal point of view made it favorable and made sense for them, that it was fully capable of accomplishing on its own. And it accordingly said no to Mr. Brown.

Moreover, for some six years Phillips had been examining the possibility of establishing operations in Puerto Rico, and in 1959 had conducted a thorough examination of a chemical plant in Puerto Rico to determine the feasibility of making it a source of petrochemicals, of broadening, if you will, the operations of an already existing plant.

In contrast to that approach, by the knowledgeable Mr. Brown to Phillips, Mr. Shippee, through Mr. Anderson, was pursuing a piecemeal approach.

In November of 1962, some five months later,

and he was seeking just a back to back arrangement with Phillips under which Phillips would sell crude oil to a proposed refinery and buy the refined petroleum products not consumed in petrochemical operations.

Shippee, through Anderson, neither asked Phillips to back a partnership nor did Phillips understand that it was being asked to be anything more than a seller of crude and a buyer of products.

Let's turn now to this question of whether there was an agreement of joint venture to which Phillips was a party.

I sometimes have the feeling that the facts of this case are treated like a ball of clay, and that successive teams of lawyers have sought to shape and reshape the discarded -- and discard the pieces that didn't fit into their theories, but nine years ago when the complaint was filed, it summarized the purported joint venture in this way -- paragraph 34:

"Prudential was to acquire the equity interest in the company to be organized and operate the project facilities and Phillips was to receive the right to supply" that is, to sell to the company to be organized, "the crude or unfinished oils to be processed at the project and the right to purchase all of the products of the refinery, with

the exception of the petrochemical raw materials."

Now, the sale of crude oil and the purchase back of refined products other than petrochemicals, a so-called back to back arrangement, was what Mr. Learned's letter of November 13, 1962 suggested, and what the parties contemplated -- this is what Mr. Farrell was referring to.

Phillips staunchly maintains that such an arrangement is not in any way a joint venture or a partnership of any kind. Note that Phillips was not offered, nor did it request, any ownership interest in the proposed project or in the company which was to be organized to take over the project. Phillips had already indicated to Mr. Brown,and this information was made available to Mr. Shippee, that it had no interest in such a joint undertaking.

Mr.Learned was expressing a willingness on behalf of Phillips simply to be a seller of oil to someone else's refinery and to buy back after processing a portion of that oil. The fact that Phillips in the business of being a seller of oil volunteered to help its prospective buyer is no more than the common assistance a seller proffers seeking to make a sale. It doesn't make them partners.

The Court will in due course instruct you on the law of joint venture, and you will be informed as to the questions of fact which you must decide in determining whether there was an agreement of joint venture.

Phillips' position is that there was no joint venture, and it points to these facts which it proves, we believe, will demonstrate: That Phillips was neither offered nor requested any share in any profits of the Prudential Propco project. Phillips was neither asked to assume nor did it agree to assume the burden of any losses of the Prudential Propco project. Nor of any expenses that Prudential might incur, which I note parenthetically amounted to something less than $2,000 for all of this activity that we have been told about so far as their out-of-pocket expenses was concerned.

Phillips was neither asked to assume nor did it agree to assume any joint obligations with Prudential. Phillips neither claimed that it had authority to obligate Prudential to other persons nor did it tell Prudential that it could obligate Phillips to other persons. Phillips was neither offered nor did it request any control over the management of the Prudential Propco project. There was no jointly held property. There was no shared and common purpose. Prudential and Phillips were on opposite sides of

the proposed transaction -- Phillips was to sell to Propco and then buy back. Propco was to buy from Phillips and then sell back.

The terms, as has been noted, remained to be negotiated of that purchase and sale. The final paragraph of Mr. Learned's letter is clear:

"Whenever you desire, we shall be glad to have our representative work with you to negotiate and complete contracts."

Just what happened? Mr. Shippee wanted a piece of paper that he could exhibit to the Puerto Rican authorities to demonstrate that he would be able to get oil for the proposed refinery and that the refinery could sell the oil products -- petrochemical feedstocks were not involved.

Anderson, acting for Shippee and himself, not for Phillips, accordingly offered Phillips the possibility of selling crude oil to a new refinery, and buying back importable gasoline, which Phillips could in turn sell within the United States. Phillips was in the business of selling oil and gasoline and was obviously willing to confirm its interest in such a possible transaction.

As far as the letter when received from Mr. Learned could only have been understood for what it was, an

expression of interest from the potential supplier and purchaser for products of the proposed Propco refinery.

As an oil consultant said to the Prudential people in December of 1962, "Any oil company would give you that kind of a letter in two minutes."

As you follow the evidence regarding the events which followed November 1962, take note of the fact that Phillips is a total stranger to all discussions regarding the control or the management of this Propco project. There was not even a formal acknowledgement of Mr. Learned's letter of November 13, 1962. At that point there was no purpose in attempting to negotiate terms regarding the sale of crude oil and the purchase of product. First, this group that was trying to put something together had to put together a total project. It never could do so. Phillips lent a hand to its prospective purchaser and source, it provided samples of crude oil, indicated what was technically feasible in the processing of such feedstocks, but it never became more than a prospective seller helping its prospective buyer to get into a position where it could make the purchase.

BEST COPY AVAILABLE

jks

Any disclosure by Prudential to Phillips was for the purpose of gaining the benefit of Phillips' knowledge and experience without any charge to Prudential. It was a submission solely for Prudential's own benefit. They were, in short, asking for free advice.

There is no suggestion that Phillips sought from Prudential any of the information which may have been shared. Shippee and his colleagues had absolutely no contact with the Phillips management. Shippee never spoke with Mr. Learned about Puerto Rico until 1965. We are talking about 1962 and the first part of 1963.

He dealt only with the technical personnel from whom he could get this free expert opinion and advice.

Now, as soon as any different involvement for Phillips was suggested to management, the word went back, no.

Now, this is why Mr. Shippee asked Mr. Anderson again for some help in April of 1963. He was trying to get Phillips to reconsider, as he said, because he knew he was through as a sponsor of a project if Phillips would not do the whole job for him.

Mr. Anderson apparently knew it was futile. He doesn't seem to have done anything after he received that letter at the end of April of 1963.

The simple fact is that Prudential was never able to put together an economically feasible project. It never could demonstrate that it would provide an adequate quantity of petrochemicals or that it had a market for whatever petrochemical feedstocks the facility, the refinery would produce.

Now, the whole purpose of the EDA was to have more petrochemical feedstocks available in Puerto Rico, but Prudential was neither able to promise an adequate production of petrochemical feedstocks nor any market.

EDA could only reach the conclusion, which it did, that the Prudential project, the Prudential-Propco-Shippee project, was a scheme of promoters to get an oil quota which woudl provide none of the advantages that EDA was seeking for Puerto Rico.

Now, look at the events in March of 1963 rather closely as you listen to the witnesses. What Prudential came to suggest at that time was that Phillips assume the responsibility for reworking everything that was in this draft brochure and that it develop a marketing study.

A marketing study is how you dispose of the products. You can't put the whole thing together without a marketing study. That, as I have indicated a few minutes ago, is what a project of this sort is all about.

What can we sell out there? Then we design, get the right kind of crude, put in the right kind of processes to break the things up, so that we end up with those products and not some others. It has to be an integrated piece.

And so what Phillips was being asked for, at the end of March, 1963, was to take all the figures, everything that had been done before, rework them and come up with a marketing study for a facility over which Phillips would have no control and to which it was simply a seller of crude and a buyer of products.

Now, the Phillips management made it clear that Phillips was not interested. Their position from November 1962, the time of Mr. Learned's letter, to these events of March and April 1963, was exactly the same.

> "We'll be happy to sell you crude. We'll be happy to buy products, but we are not going to be sponsors, joint sponsors with someone else of a facility of this sort."

This is what they told Brown a year before, and their position that they had follows was completely consistent all the way through and unchanging, from their point of view. There was no reason to reconsider that position.

Now, there are interesting events of May and

June of 1963 which followed when the Prudential-Propco group, in their disappointment, fell to squabbling among themselves, and Mr. Shippee and the Warburg investment banking people engaged in some mild, mutual recrimination and some name calling, but whatever went on, Phillips remained a complete stranger. It was no part of the controversy and it, in fact, had no knowledge of the whole thing. From the outset, I submit, it retained its independence and freedom as an outsider, which it was clearly regarded as being by all the participants in the Prudential-Propco effort.

Now, you will search the evidence, as this record is made before you, listen to the testimony and the exhibits that are introduced; you will search in vain for any participation by Phillips in any meetings where matters relating to the management or the control of the Prudential-Propco project were discussed. This is where Phillips was -- completely removed.

Now, Mr. Shippee's unfortunate airplane accident in July of 1963 coincided with this disintegration of any Prudential Propco sponsored project.

Now, conflicting stories are told of what happened within the Prudential-Propco group during 1963, but I say again what is clear is that Phillips was no part

of the group and no part of any of the discussiosn among the group at that time.

Now, as we proceed on with our story, we come to what Phillips believes was the birth of its project in August of 1963.

Now, remember, Mr. Coan and Mr. Chapman, back into 1961, had been trying to put something together. They tried with successive groups of people. They worked very closely with Mr. Brown, and Mr. Brown had asked Phillips to join them in the spring of 1962. Phillips had said no, and you have this abortive, unsuccessful Prudential-Propco effort between November of 1962 and the spring of 1963, and Mr. Chapman and Mr. Coan still want to carry on, and Mr. Chapman decides to go back to Phillips, and he tells Mr. Learned of Phillips, in August, 1963, that he believes if Phillips would sponsor a project that he, Mr. Chapman, working on Phillips' behalf, could obtain a quota for such a project.

Now, Chapman's inquiry of Phillips coincided with the development of a new foreign source of crude oil for Phillips. This was in Algeria, and Mr. Learned, when Mr. Chapman approached him at that time, perceived the possibility of a special program to take that Algerian crude oil. There was great demand at that time -- now,

again, it is an entirely different situation from todays There was great demand for fuel oil in Europe. There was this possibility in Puerto Rico. The feedstock that you would need for petrochemicals that would be most desirable was at the lighter end. You would be taking your fuel oil up from a refinery in Algeria to Europe and you would be taking other products from the refinery to Puerto Rico for further processing.

Now, this was Mr. Learned's concept when Mr. Chapman called, and he said, "Well, maybe this will make sense."

And what Mr. Learned then directed was that a comprehensive study he made, what came to be called the Puerto Rican European Algerian project. This is within Phillips. It was known as the P.E.A., the PEA project, and the PEA project visualized taking oil from Algiers, refining it in Algiers through the initial stages, and then sending the heavy ends up to Europe and the light ends to Puerto Rico.

Phillips immediately put a task force of 46 people to work on this, drawn from nine departments of the company -- they took this very seriously -- to investigate every aspect of it, and their report, in late September, confirmed the general feasibility. They didn't go into

details of design at that time, but they were extrapolating what could be anticipated and the kinds of products and how those products would be disposed of, that the whole thing could make economic sense.

And the Phillips management, upon receiving that report in the late weeks of September 1963, endorsed going forward with detailed development of the proposal. Chapman was informed of this. He was delighted. He alerted Coan, who informed the New York office of EDA. Anderson was informed by Adams and Learned that they would sponsor alone their own Puerto Rican project, and had no interest in working further with anyone else on this.

Now, the development of the Puerto Rican phase of this PEA project within Phillips that went forward from that time is what has come to fruition after an awful lot of sustained effort over the next several years in the petrochemical facility in Puerto Rico.

Now, Chapman and Coan made available to Phillips the material that they had previously assembled in their successive efforts, beginning in 1961, including much of the material they had made available to Prudential.

Coan introduced certain Phillips personnel to the EDA officials here in New York, and he shared with

Phillips, as he had with Prudential a year earlier, his insights as to what he believed the EDA officials were looking for.

Now Phillips, after working at this for a number of weeks, became satisfied with their progress and with their ability internally to develop a feasible project, and they took the next step of a formal retainer agreement of Mr. Chapman's law firm as the lawyers for Phillips with respect to this project, and they took the further step of a formal retainer agreement with Mr. Coan and his management firm called Omega Management, and both of these professional firms were put under retainer as professionals representing Phillips, Mr. Chapman to process the application for an allegation of what was to be, as I have indicated, unfinished oil or shall we call it naphtha, and Mr. Coan worked with the authorities in Puerto Rico in order to develop the best possible cooperation there and to bring the Phillips proposal into shape that would meet what it was that EDA was seeking.

Now, in due course, in mid-December of 1963, we move rather quickly down through here, as the Phillips personnel were putting together all of the requisite studies, an overall piece was put together on December the 16th, 1963, and it was in a letter -- this is the

central letter; it is the basic Phillips proposal that was put to EDA, December the 16th, 1963, and on the basis of that Learned proposal, EDA said, "We want to meet the Phillips people. We want to have them come down and we will have a meeting here of the top Phillips officers with the EDA authorities."

And that meeting took place in the first few days of January of 1964, and Phillips made a formal presentation, complete with slides and description of what they were doing in various parts of the world, and its relation to petrochemicals as well as to all the other aspects of the oil business.

Now, among the materials assembled for that trip to San Juan was a brochure prepared to Mr. Coan's specifications, which included in its introductory material several sentences from the Prudential-Propco booklet which Mr. Coan had similarly helped with back a few months before.

I suggest it is wholly innocuous, useless imitation, obviously prompted by Coan's successive involvement for more than two years with at least four different sponsoring groups, each of which wanted to put together some sort of a presentation, and this is the curious fact: The only persons to whom the language was

ever shown were totally unimpressed.

Mr. Durand, the administrator of EDA, who saw it, said In his testimony that it was an innocuous statement and that if he had sought to explain the purpose, he would have used much stronger language and been much more specific.

Now, Mr. Van Hyning told Phillips to rework the whole thing; this wasn't going to serve that purpose; discard all of the language from the earlier brochure; this wasn't what weas needed. He said, "Go back to Mr. Learned's letter that he sent down in the middle of December 1963 and build the presentation that you are going to make around that," and in this he was thinking of the presentation that was going to be made to the Department of the Interior.

Now, all of that was the direct result -- all that was presented by Mr. Learned to Mr. Durand in December of 1963 was the work of the Phillips personnel.

The proofs will show that nothing material to the Phillips proposal had any origin in the preceding efforts with which Mr. Chapman and Mr. Coan were involved. It was made out of whole cloth by Phillips going back with this that they started to develop as the PEA project in August of 1963.

What was EDA's response? It was immediate. This is what they had been looking for. This will do for Puerto Rico what we are after.

And right within the first weeks of January Mr. Durand sent word to Secretary Udall asking that Udall give favorable consideration to amending the regulations as might be necessary to allow more oil to come into Puerto Rico, so it could be used in this project that Phillips was proposing.

And Mr. Durand followed that up on the 28th of January of 1963 with a letter to Mr. Udall, a lengthy letter, explaining just why this was what was needed by Puerto Rico, and expressing the reasons why Mr. Durand believed it was compatible with the regulation of imports that the U. S. Government was imposing at that time.

Now, for the next six months Phillips personnel worked with Mr. Chapman in developing and presenting various materials to the Department of the Interior and various conferences were held at the Department of the Interior, and then, as Mr. Farrell noted, he jumped right over to that -- there were many hundreds of hours of work in the intervening months. Public hearings were held at the end of July by the Oil Import Appeals Board. Phillips, at that hearing, was supported by EDA.

Mr. Durand was a witness for Phillips and for the project, in support, to indicate what this meawnt to Puerto Rico.

Phillips fully described the entire project from the unfinished oils or naphtha stream through the petro-chemical facilities, through the various stages of chemical processing.

But what a storm it created. Virtually the entire oil industry of the United States came in on the other side in opposition. This was a very substantial dispute. It required Mr. Chapman, who was Phillips' lawyer, to develop very extensive presentations and there were additional submissions over the following months, after the hearing, in August and in the fall of 1964. Everyone knew what was going on -- everyone in the oil industry. I am not sure that I did. Probably most of you weren't regarding this as front page, but everyone in the oil industry was seeing a report blow by blow of this dispute. It was in all of the oil publications at that time.

Now, Mr. Shippee and his people were silent. They took no part, contributed nothing, never suggested that they had any role in the whole Phillips-sponsored project. Phillips had working with them Mr. Chapman, Mr. Coan and

EDA.

Ultimately, but not until February of 1965, the Secretary of the Interior, Mr. Udall, announced that he would approve an oil allocation for the project but -- and this is a terribly important but -- only if a satisfactory contract were negotiated between Phillips and EDA to assure that the purposes that EDA was espousing and for which they wanted this project would be fulfilled.

And as I said when we were thinking together about oil import quotas a little time ago, this was not an ordinary oil import quota. It was completely non-negotiable. It could be traded to no one. It was loaded with conditions and commitments by Phillips, substantially reducing any economic benefit Phillips or anyone else that had such a project could hope to obtain.

Now, the negotiaions of that contract ran from February of 1965 to May, the end of May 1965, and EDA drove a hard bargain. This was all a part of what was going on and what Phillips had to do to convince the Interior Department that they were sincere as to what they were going to place in Puerto Rico, and they put their names down on paper to say, yes, we will do all of that, and in addition, we will put 55 million dollars into the plants that surround it, and we will plow back all profits for ten

years.

There wasn't a word of this in anything that Mr. Farrel said to you.

Now, the agreement was ultimately signed on May 27th of 1965. But meanwhile the opposition onthe outside had not abated at all. There were further public hearings in March of 1965. Again, Phillips and EDA were involved in these in making the essential presentation. Mr. Chapman was again very much involved with those efforts.

(Continued on next page.)

Even after the agreement was reached at the end of May, that wasn't the end. The President at that point, who was supposed to be so friendly to this situation, according to Mr. Farrell, appoints an inter-departmental committee to study the whole oil import program. And everything stops. Various high officials in Puerto Rico wrote to Mr. Udall and they said "What's going on? We thought we had done all this. We had gone through it with Phillips. When can we ever go forward with this project?"

And throughout the summer and the fall of 1965 nothing happens, and everything was held in abeyance. It was only at long last in December, 1965 that the necessary official action was taken authorizing an allocation to Phillips effective in 1966.

What we have after two and a half years of sustained effort by Phillips, in December, 1965, now ten years ago, they finally obtained the grant for the oil allocation. It was at great expense with these commitments, twenty-five percent of the sotck of Phillips Puerto Rico Core, Inc., which is the name of the company that has this petrochemical facility was given to PRIDCO, the Puerto Rican Industrial Development Company, which is an agency of the PUerto Rican government, Phillips had seventy-five percent of the stock and PRIDCO had twenty-five percent.

bslt 2

And for this entire period, August of 1963 to December of '65, Prudential Connecticut was just a total stranger to what was going on, and it was during this period that in fact its export existence ceased.

But remember this, obtaining the quota was only the initial step. You had to design, detail design an entire petrochemical facility, and you had to build it, and it took from January of 1966 to January 1st of 1968 to build it.

Now, it was late in that period, in September of 1967, with most of the facilities installed, ready for testing, and the first pass through or product would be just a few months away, that the complaint in this action was filed.

I suggest that nowhere is the bogus character of the present claim more apparent where against this background, and after Phillips had already invested $30,000,000 in building this factility -- not to mention its obligations that would come into play -- Prudential New York asserted in the complaint that a hundred percent of Phillips' equity interest in Phillips Puerto Rico Core belonged to it.

The patent absurdity of such a claim has led plaintiff, over the intervening years -- this action

bslt 3

has been pending -- to scale down what they would claim, and its come down to twenty-five percent, or perhaps even to ten percent, according to what has been indicated that some of their experts would testify to. But this serves only as an acknowledgement that there never was any agreement of joint venture. That crucial term -- if we claim a hundred percent, well, maybe twenty-five percent, maybe ten percent. If you had no better idea of what your relation is with your supposed partner, how can you possibly say that there is an agreement upon anything?

Phillips was to receive no interest in what Prudential and PROPCO were talking about at the end of 1962 and by the same token, Prudential, PROPCO, however they may be, were to receive no interest in the Phillips project. The evidence that will be presented to you, ladies and gentlemen, will show that Phillips has not sought to avoid any legitimate obligation arising out of this petrochemical facility and its development.

The Chapman law firm, which was retained, was fully compensated for their legal services; the Coan management firm was similarly retained by Phillips was fully compensated, prior to Mr. Coan's untimely death in 1966 -- he has now been dead nearly nine years.

The brief and futile involvement of Mr. Shippee

bslt 4

and his group, now thirteen and fourteen years ago, is, I submit, an empty effort and a pale contrast to the sustained contribution by Chapman and by Coan to the realization of the initial steps in putting this project together.

Ladies and gentlemen, it is a stale claim, and I believe that the proof will convince you that its staleness reflects both the absence of a proper, good faith claimant, and of any proper and good faith claim. And that is what our proof will be about.

Thank you very much for your attention.

THE COURT: Members of the jury, at this time we will take a brief recess. You may withdraw to the jury room.

(Jury excused.)

(Recess taken.)

(In open court - jury present.)

THE COURT: Members of the jury, Court's Exhibits 2 and 3 are now received in evidence. Court's Exhibit 2 is a paper entitled "Stipulated Facts."

Court's Exhibit 3 is a paper entitled "Stipulated facts with reference to petroleum, its basic and intermediate processing, its products and associated industrial activities."

Now, anything that is contained in the

bslt 5

statement of stipulated facts in Courts' Exhibits 2 and 3 you must deem to be true for the purposes of this case just the same as if a witness whom you believed had testified to these facts. They have been stipulated in that form in order to save time and shorten the trial.

The attorneys will be permitted to read to you from the stipulated facts, and if you need to refer to them during your deliberations, you will be able to send out for them and have them sent to you inside the jury room.

All right.

Mr. Farrell, you may go forward for the plaintiff.

MR. FARRELL: Your Honor, I intend to read to the jury from the stipulated facts at this time.

THE COURT: You may read as much as you wish to read at this time, and if Mr. MacCrate wants to read anything after you have finished for the purpose of keeping them both in context, he may do so, or he may read later on, whichever he prefers.

MR. FARRELL: "Stipulated Facts."

"Prudential Connecticut was organized on October 30, 1959 under the laws of the State of Connecticut and its certificate of organization was filed November 12, 1959. Until Octob er 1, 1962 its principal place of

bslt 6

business was in Greenwich, Connecticut, when it opened an office in New York City which was thereafter its principal place of business.

"Prudential Delaware was organized on March 1, 1965, under the laws of the State of Delaware. On May 26, 1965 the stockholders of Prudential Delaware voted to acquire all property and assets and liabilities of Prudential Connecticut in a share for share exchange of stock effective as of June 30, 1965.

"On May 26, 1965 the stockholders of Prudential Connecticut voted to reorganize as Prudential Delaware, to dissolve Prudential Connecticut as of June 30, 1965, and to transfer the entire assets, liabilities and good will of Prudential Connecticut to Prudential Delaware as of June 30, 1965 and that each shareholder of Prudential Connecticut should recieve one share of stock in Prudential Delaware for each share held in Prudential Connecticut.

"A certificate of dissolution of Prudential Connecticut was filed on November 12, 1965."

THE COURT: Excuse me, I'm going to ask you to read the numbers also for the substance --

MR. FARRELL: The paragraph numbers?

"5. Prudential Drilling Funds, Inc. ('Prudential Funds') was incorporated in Delaware on December 21, 1965. Its name was changed to Prudential Funds, Inc.,

bslt 7

on August 5, 1966.

"6. On July 13, 1966 the shareholders of Prudential Delaware voted to chage its name from Prudential Oil Corporation to Prudential Equities Corp. and the minutes of the shareholders meeting recite that the change was 'to reflect more accurately the business of the corporation.' This change was duly effected on July 15, 1966. On June 2, 1969 the name of Prudential Delaware was further changed to Prudential Resources Corp.

"7. Plaintiff Prudential Oil Corporation, (Prudential New York) is a New York corporation which was incorporated on July 12, 1966.

"8. Defendant Phillips Petroleum Company ('Phillips') is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma. At all times the business of Phillips was that of an integrated petroleum enterprise engaged in every phase of the petroleum industry and in various petrochemical activities, including exploration for and production of crude oil, natural gas and natural gas liquids; transportation of crude oil from wellhead to refinery; refining and processing of crude oil and unfinished oils into a broad range of by-products, including gasoline, aviation fuel, petrochemical intermediates, and petrochemicals; and the transportation and marketing of refined

products and petrochemicals.

"B. Assignment of Claims:

"9. As of June 30, 1965, a general indenture of convenyance, assignment and transfer of property and assets from Prudential Connecticut to Prudential Delaware, without specification of specific property and assets, was executed by Prudential Connecticut. Also, as of June 30, 1965, an indenture of assumption of liabilities taken over by Prudential Delaware from Prudential Connecticut, without specification of specific liabilities, was executed by Prudential Delaware.

"10. On June 20, 1966, the board of directors of Prudential Delaware took the following action:

"(a) approved and authorized the transfer by Prudential Delaware to Prudential Funds of all of Prudential Delaware's assets relating to its business in the management of oil and gas drilling funds, including its fiscal agency for 'the Prudential Drilling Funds' in exchange for all of the issued and outstanding stock of Prudential Funds and the assumption by Prudential Funds of certain liabilities of Prudential Delaware with Prudential Delaware 'retaining to itself, all of the right, title and interest of (Prudential Delaware) in and to any business unrelated to

blst 9

the market of oil and gas drilling funds.' The business of Prudential Funds consists of publicly offering unit participations in and administering oil and gas exploration and development programs known as the 'Prudential Drilling Fund Programs,' which provide facilities for co-ownership and participation by individuals in high income tax brackets in oil and gas drilling ventures.

"(b) voted to change the name of Prudential Delaware to Prudential Equities Corp.

"(c) authorized the transfer to Prudential New York, in exchange for all the capital stock of Prudential New York, of 'all obligations, rights and claims of the Corporation with respect to the joint venture, and with respect to the promotion, financing and devleopment of petrochemical companies related to or associated with the joint venture with Phillips Petroleum Co. and, upon the effectiveness of the aforementioned change of name of the Corporation, the use of the name of the Corporation, Prudential Oil Corporation'.

"(d) authorized and directed the officers of Prudential Delaware to form a new subsidiary under the name of Prudential Oil Corporation under the laws of the State of New York.

"11. On July 13, 1966 Nathan M. Shippee as the

incorporator of Prudential New York elected himself and Patricia R. Morel as the directors of Prudential New York until the first annual meeting of shareholders, or until their successors were elected and qualified. On the same day the directors of Prudential New York elected the following officers of the corporation: Nathan M. Shippee - President and Treasurer; Patricia R. Morel - Vice President and Secretary.

"12. On July 13, 1966, the directors of Prudential New York voted to acquire all the rights and claims of Prudential Oil Corporation, a Delaware corporation, with respect to the joint venture with Phillips Petroleum Company, and with respect to the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, together with the use of the name of Prudential Oil Corporation, in exchange for 20,000 shares of Common Stock, par value $1 per share, of the Corporation and the assumption by the Corporation of any obligations of Prudential Oil Company [sic], a Delaware corporation, of any obligations with respect to said joint venture, the same to be effective as of the close of business on July 13, 1966, and voted that 'the proper officers of this corporation be, and they hereby are, authorized and directed to issue to

Prudential Oil Corporation, a Delaware corporation, (name being changed to Prudential Equities Corp.) certificate evidencing 20,000 shares of fully paid and non-assessable shares of Common Stock of the Corporation upon delivery of the aforementioned consideration to this Corporation' and that 'the aforementioned consideration to be received by the Corporation in exchange for the 20,000 shares of Common Stock, par value $1 per share, of this Corporation be, and the same hereby is, adjudged and declared to be of a value of at least $20,000, and to be necessary for the business and in the best interests of this Corporation'.

"13. On July 13, 1966, Nathan M. Shippee on behalf of Prudential Delaware executed a general indenture of conveyance, assignment and transfer to Prudential New York, which states that Prudential Delaware was transferring 'the name Prudential Oil Corporation, and the use of said name, and the right, title and interest of the Grantor Prudential Delaware in and to the joint venture with Phillips Petroleum Company in respect of the project for a petrochemical complex in Puerto Rico, including all business properties and interests in connection therewith, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum

Company, and any and all claims, rights or causes of action accruing or arising from any or all of the foregoing.'

"Also, on July 13, 1966, Nathan M. Shippee on behalf of Prudential New York, executed an indenture of assumption of liabilities from Prudential Delaware which recited that Prudential New York would 'assume payment of any and all liabilities and performance of any and all obligations of Prudential Delaware accrued to or existing at the date hereof, of whatsoever nature or character, whether absolute or contingent, arising out of or in connection with the said joint venture with Phillips Petroleum Company in respect of a project for a petrochemical complex in Puerto Rico, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the said joint venture with Phillips Petroleum Company.'

"14. On October 3, 1966, the Board of Directors of Prudential Delaware (whose name has been changed to Prudential Equities Corp.) authorized and directed the proper officers of Prudential Delaware, at such time as they deemed it advisable and in the best interests of Prudential Delaware, to commence a legal proceeding against Phillips by and in the name of Prudential New York and to take such further action, including

retaining counsel, and executing and delivering all such further instruments as they deemed necessary, proper or convenient.

"On September 11, 1967 the Executive Committee of Prudential Delaware adopted a resolution that the proper officers of Prudential New York, acting for that corporation, are authorized and directed to take all steps necessary or advisable in the best interests of Prudential Delaware and Prudential New York to commence suit against Phillips, including the retention of all counsel deemed necessary by the proper officers of Prudential New York 'in order to recover the property rights of (Prudential New York) in and to the petrochemical complex in Puerto Rico, presently administered by Phillips Petroleum Company' and adopted a further resolution ratifying and confirming 'the retention of the law firm of Robert Conrad, Esq. of Washington, D.C., and Palmer, Searles, Delaney & Shaw of New York City by [Prudential New York] to work with the office of Burton M. Abrams, counsel for [Prudential Delaware], for the purpose of commencing the said suit against Phillips Petroleum Company.'"

Your Honor, I have in the following paragraphs there are exhibits referred to and I will take them and offer them as they appear. They have been pre-marked --

THE COURT: Is it your intention to read the whole thing?

MR. FARRELL: No, your Honor. I want to read-- I'll tell you where I intend to read to.

THE COURT: Go ahead.

MR. FARRELL: Chronologically =-

THE COURT: That's all right, plaintiff. Go right ahead.

MR. FARRELL: "In 1942 the Puerto Rican government commenced a program known as "Operation Bootstrap" to encourage industrial and commercial development in Puerto Rico with the objective of creating job opportunities in the island. Since its establishment in 1950 the Economic Development Administration, EDA, has administered this program.

"As of March, 1961, when Rafael Durand succeeded Teodoro Moscoso as Administrator of EDA, there were two existing oil refineries in Puerto Rico which had been constructed during the early 1950's as a part of 'Operation Bootstrap'.

"During the first half of 1961 the officials of EDA prepared to encourage the location in Puerto Rico of a refining and petrochemical facility and thus encourage the expansion of the petrochemical industry of Puerto Rico.

Such program was conceived as part of 'Operation Bootstrap' to compensate for the lack of indigenous raw materials in Puerto Rico necessary to support industrial growth.

"The products of such a facility were looked upon as intermediate products which ultimately would be used to produce a large variety of consumer products, thus forming the basis of new diverse industries and resulting in substantially increased employment in Puerto Rico."

The next section is the section on petroleum and its processing, and I am excluding that, your Honor, at this time.

THE COURT: Very well.

MR. FARRELL: "E. The Activities of the Gibbs Group and Related Developments Pertaining to a Third Refinery in Puerto Rico.

"(23) In the spring of 1961, John H. Gibbs sent a letter proposal regarding a third refinery in Puerto Rico dated March 30, 1961 to Mr. J. Diaz Hernandez, executive director for the continental branch of EDA, which letter has been marked at pretrial proceedings as Defendant's Exhibit 432-A for identification."

Your Honor, this has now been marked Joint Exhibit 1, and I offer it.

THE COURT: All right. Received in evidence.

(Joint Exhibit 1 was received in evidence.)

THE COURT: Proceed.

MR. FARRELL: Your Honor, I will not read Joint Exhibit 1.

THE COURT: You can read it later on if it becomes important.

MR. FARRELL: "EDA in June 1961 and thereafter undertook a program of actively encouraging potential sponsors of a third refinery to build such a project in Puerto Rico. Over the course of the next four years, EDA had discussions with various potential sponsors of such a project including Petroquimica Puertorriquena, Inc., ('PPI,' a company organized by John H. Gibbs), Jules Flescher (Ferma Corporation), John C. Worthy, (President of Pipeline Welding & Construction Company) and Albert Joseph Cella ('the Gibbs-PPI group'); Gulf Oil Corporation; Texaco, Inc.; Monsanto Company; Ashland Oil Company; Union Texas Petroleum Corporation, (a division of Allied Chemical Corporation); E. M. Warburg & CO., Inc., and the Standard Oil Company(New Jersey.)

"On June 15, 1961, Ivan E. Irizarry, Industrial Representative of EDA in New York sent a letter to John H. Gibbs which has been marked at pretrial proceedings as

Defendant's Exhibit 432-M for identification."

Your Honor, this has been marked Exhibit 2, and I offer it.

THE COURT: All right. You may just refer to the trial exhibit numbers.

MR. FARRELL: Yes,your Honor.

THE COURT: All right. Joint Exhibit 2 will be received in evidence.

(Joint Exhibit 2 was received in evidence.)

MR. FARRELL: "A preliminary draft of prospectus for Petrofina Puertorriquena, Inc. was prepared dated July 25, 1961, which has been marked at pretrial" --

Your Honor, this has been marked at pretrial as Exhibit 3, Joint Exhibit 3, which I offer.

THE COURT: All right. Joint Exhibit 3 is received in evidence.

(Joint Exhibit 3 was received in evidence.)

MR. FARRELL: "In August 1961 the Gibbs-PPI group arranged with Jack P. Coan and the consulting firm of which he was president and principal stockholder, Omega Management Inc., to assist in the preparation of a feasibility study and brochures for a refinery in Puerto Rico.

"In this connection, Omega entered into an agreement with Universal Oil Products Company (UOP) under

date of September 12, 1961, which agreement is set forth in letters which have been marked at pretrial as Joint Exhibit 4 and 5," which I offer, your Honor.

THE COURT: Joint Exhibits 4 and 5 are received in evidence.

(Joint Exhibits 4 and 5 were received in evidence.)

MR. FARRELL: To continue, "And the agreement provides for UOP to furnish to Omega a general feasibility study of such a refinery in Puerto Rico.

"This UOP study entitled 'Processing and Economic Data for a Proposed Puerto Rico Refinery' dated October 1961 was forwarded to Omega on October 13, 1961, which study and covering letter have been marked at pretrial proceedings as Joint Exhibits 6 and 7," which I now offer, your Honor.

THE COURT: Joint Exhibits 6 and 7 are received in evidence.

(Joint Exhibits 6 and 7 were received in evidence.)

MR. FARRELL: "On October 10, 1961, the Gibbs-PPI group met with Ivan Irizarry, an official of EDA, and the meeting is described in a memorandum which has been marked at pretrial proceedings as Defendant's Exhibit

432-X for identification." And I offer -- I'm sorry, that was Joint Exhibit 8, your Honor, which I offer.

THE COURT: Joint Exhibit 8 is received in evidence.

(Joint Exhibit 8 was received in evidence.)

MR. FARRELL: I am going to read this exhibit. It is short, but I will read the exhibit. This is Mr. Irizarry's memorandum.

"Today I met with Mr. John Gibbs, Jack Coan, Julius Flesher, Clive Worth and Al Seller, who are the principals involved in this project. The purpose of the meeting was to have further discussions on the"-- I will go on --"on the" -- illegible word here, "of the prospectus. Universal Oil of Chicago is preparing all production and" -- another illegible word.

THE COURT: Excuse me, isn't there a copy that is readable?

MR. FARRELL: Your Honor, I have not been able to acquire a copy that is any more readable.

THE COURT: Because an exhibit that can't be read isn't of much use to anybody.

MR. FARRELL: Your Honor, I understand these were produced by Mr. Diaz-Hernandez who has a copy himself.

THE COURT: Do the best you can.

MR. FARRELL: The best we have been able to do. And I gather Mr. MacCrate's copy is even worse than mine.

I have read all that I need to read, your Honor, so I can proceed.

THE COURT: All right.

MR. FARRELL: On October 26, 1961 Sam Van Hyning, an economic consultant employed by FDA, sent two memoranda to Durand which have been marked at pretrial proceedings as Defendant's Exhibits J-9 and J-10, and I offer them, your Honor.

THE COURT: J-9 and J-10 received in evidence.

(Exhibits J-9 and 10 were received in evidence.)

MR. FARRELL: On November 1st, 1961, Irizarry prepared a memorandum of his meeting with the Gibbs-PPI group which has been marked as Defendant's Exhibit 432-Z for identification and on November 2, 1961, he prepared a

memorandum of his telephone conversation with Van Hyning which has been marked at pretrial proceedings as Joint Exhibit 11, which I offer, your Honor.

THE COURT: What are you doing about 432-Z?

MR. FARRELL: 432-Z is Joint Exhibit 11, your Honor. I must have --

THE COURT: All right. 432-AC-1 --

MR. FARRELL: 432-AC-1 is J-12. That's the next one.

THE COURT: All right.

MR. FARRELL: We have them, your Honor --

THE COURT: Let's try to stick with the trial numbers if we can.

MR. FARRELL: Right. In any event, I offer Joint Exhibits 11 and 12.

THE COURT: They will be received.

(Exhibits J-11 and J-12 were received in evidence.)

MR. FARREL: On November 3, 1961, Coan met with Van Hyning in Puerto Rico concerning a proposal by PPI and the meeting is described in a memorandum prepared by Van Hyning dated November 8, 1961, which has been marked at pretrial proceedings as Joint Exhibit No. 13.

THE COURT: J-13 will be received.

(Exhibit J-13 was received in evidence.)

MR. FARRELL: Van Hyning sent a letter to Coan dated November 8, 1961, which has been marked a pretrial proceedings as Joint Exhibit 14.

Now, I am going to read this letter which is a brief letter.

THE COURT: Exhibit J-14 received in evidence.

(Exhibit J-14 was received in evidence.)

(Mr. Farrell read from Exhibit J-14 in evidence to the jury.)

MR. FARRELL: Coan sent a letter to Van Hyning dated the same date, a copy of which has been marked at pretrial proceedings ast Joint Exhibit 15, and I am going to read this letter, your Honor.

THE COURT: J-15 received in evidence.

(Exhibit J-15 was received in evidence.)

(Mr. Farrell read from Exhibit J-15 in evidence to the jury.)

MR. FARRELL: There are two paragraphs which I will not read because they are talking about another project entirely.

By letter of November 24, 1961, and a memorandum of the same date, which have been marked at pretrial proceedings as Joint Exhibits 16 and 17, Coan transmitted

to Diaz-Hernandez a proposed letter which he sought to have Durand on behalf of EDA write to PPI, care of Omega Management Inc., to record EDA's support of the PPI proposal.

And I offer the exhibits 16 and 17 that I have just referred to, your Honor.

THE COURT: J-16 and J-17 received in evidence.

(Exhibits J-16 and J-17 were received in evidence.)

MR. FARRELL: Under Presidential Proclamation 3279 of 1959, the United States Oil Import Control Program had been established and the Department of the Interior had issued Oil Import Regulations in implementation of the program. EDA had contact with the responsibloe officials of the Interior Department from time to time to remind the Department of the importance of assuing adequate oil supplies for the operation of the two existing refineries in Puerto Rico. The officials of EDA recognized that there would have to be changes made in the Oil Iiport Control Program for a third refinery to be built in Puerto Rico.

29. Rafael Durand and Sam Van Hyning met at the Suan Juan airport with the Secretary of the Interior, Stewart L. Udall in December 1961 to discuss Puerto

Rico's paucity of indigenous industrial raw materials and the fact that a growing petrochemical industry could partially compensate for this scaccity and that such an industry should not conflict with the basic objectives of the Oil Import Control Prograwm.

30. During December 1961, Gibbs in the company of Coan, retained Owcar L. Chapman, of Washington, D.C., and his law firm as counsel to PPI to assist in obtaining the necessary oil import authorization for use in connection with the proposal for a refinery in Puerto Rico which the Gibbs-PPi group was then seeking to develop. The letter setting forth the terms of retainer dated December 11, 1961, has been marked at pretrial proceedings as Joint Exhibit 18 and I offer that at this time, your Honor.

THE COURT: 18 received in evidence.

MR. FARRELL: Chapman, in turn, requested Bruce K. Brown, a petroleum and petrochemical consultant, to advise him with respect to the proposal of the Gibbs-PPI group.

31. EDA under date of December 12, 1961, sent a letter to PPI, care of Mega Managem ent, Inc., stating its support for the PPI proposal, which letter has been marked at pretrial proceedings as Joint Exhibit 19, your

Honor, which I offer at this time.

THE COURT: Received in evidence.

(Exhibit J-19 was received in evidence.)

MR. FARRELL: 32. In February 1962, the efforts of the Gibbs-PPI group to develop a proposal for a refinery in Puerto Rico were discontinued and the retainer of Chapman and his law firm as counsel to PPI was terminated.

F. The Activities of Brown in Conjunction with Chapman and Coan Pertaining to a Refinery in Puerto Rico.

33. Commencing in December 1961, at the request of Chapman, Brown undertook to analyze the PPI project. Brown submitted a letter and memorandum dated December 22, 1961 to Chapman which have been marked at pretrial proceedings as Joint Exhibits 20 and 21 which I offer at this time, your Honor.

THE COURT: Received in evidence.

(Exhibit J-20 and J-21 were received in evidence.)

MR. FARRELL: 34. In February 1962, after the efforts of the Gibbs-PPI group were discontinued, Chapman, Coan and Brown, and for a short period Gibbs individually, continued working together toward the development of a refinery in Puerto Rico. Coan asked UOP to perform

a site survey for the location of a refinery in Puerto Rico and to evaluate the timing for engineering agreements, contractors' bidding, and construction necessary for completion of such a refinery. Pursuant to these requests, UOP provided in February 1962 a proposed schedule for the completion of the refinery, which has been marked at pretrial proceedings as Joint Exhibit 22, your Honor, which I offer at this time.

THE COURT: Received in evidence.

(Exhibit J-22 was received in evidence.)

MR. FARRELL: In March 1962 provided a site survey for the possible location of a refinery, which has been marked at pretrial proceedings as Joint Exhibit 23, which I offer.

THE COURT: Received.

(Exhibit J-23 was received in evidence.)

MR. FARRELL: And 24.

THE COURT: Same ruling.

(Exhibit J-24 was received in evidence.)

MR. FARRELL: In April 1962, pursuant to Coan's requests, UOP prepared and transmitted to Omega Management a revised and expanded general feasibility study for a refinery for Puerto Rico, based on a charge stock of 60,000 barrels per day of crude oil, which study has been

marked at pretrial proceedings as J-24 and 25.

24 I have already offered and I now offer 25, your Honor.

THE COURT: Received.

(Exhibit J-25 was received in evidence.)

MR. FARRELL: On March 7, 1962 --

THE COURT: I am sorry, now I understood at the bottom of page 14 that Exhibits 416 and 416-A --

MR. FARRELL: They are both 23, your Honor.

THE COURT: I see. And 420 is 24 and 423 is 25.

MR. FARRELL: Yes, Your Honor.

THE COURT: Thank you.

MR. FARRELL: 35. On March 7, 1962 Coan and Gibbs visited the New York offices of Phillips Petroleum Company. Following this meeting, A. D. Fischbeck, a manager for the developm ent of petrochemical projects in Phillips' New York office, prepared a memorandum which has been marked at pretrial proceedings as Joint Exhibit 26, and sent a letter to Coan dated March 9, 1962, which has been marked at pretrial proceedings as Joint Exhibit 27 and I offer them at this time, your Honor.

THE COURT: Received.

(Exhibits J-26 and 27 were received in egidence.)

MR. FARRELL: A subsequent meeting attended by Fischbeck, Brown and Coan, Richard Fleming of the Research and Engineering Department of Sun Oil Company and Aimison Jonmard, vice-president of Planning for Celanese Chemical Company was held on or about March 16, 1962, a memorandum of which has been marked at pretrial proceedings as Joint Exhibit 28 which I offer at this time, your Honor.

THE COURT: Received.

(Exhibit J-28 was received in evidence.)

MR. FARRELL: I am going to read this memorandum, your Honor, which is not very long.

(Mr. Farrell read from Exhibit J-28 in evidence to the jury.)

MR. FARRELL: Thereafter Coan sent a letter dated March 22, 1962, to Fischbeck, which letter has been marked at pretrial proceedings as Joint Exhibit 29, which I now offer, your Honor.

THE COURT: Exhibit 29 received in evidence.

(Exhibit J-29 was received in evidence.)

MR. FARRELL: Fischbeck sent a letter to Coan dated April 2, 1962, which letter has been marked at

pretrial proceedings as Joint Exhibit 30, which I now offer, your Honor.

THE COURT: Exhibit J-30 received.

(Exhibit J-30 was received in evidence.)

MR. FARRELL: I will read this letter of April 2, 1962.

(Mr. Farrell read from Exhibit J-30 in evidence to the jury.)

MR. FARRELL: 36. On May 16, 1962 Brown met with the following members of the Phillips' management in Bartlesville, Oklahoma:

W. C. Hewitt, Chairman of the Operating Committee; C. M. Kittrell, Vice Chairman; J. L. Kyser, Manager of Supply and Transportation; A. J. Head, Manager of Phillips Chemical Company; and P. M. Arnold, Manager of Research and Development. With a letter dated May 16, 1962, addressed to the attention of W. C. Hewitt, which letter has been marked at pretrial proceedings as Joint Exhibit 31, Brown presented to Phillips a memorandum which has been marked at pretrial proceedings as Joint Exhibit 32, both of which I offer at this time, your Honor.

THE COURT: Received in evidence.

(Exhibits J-31 and J-32 were received in

evidence.)

MR. FARRELL: 37. On May 9, 1962 Chapman and Brown met with Cordell Moore, Oil Import Administrator in the U. S. Interior Department. A memorandum of the conference was prepared by Brown which has been marked as Joint Exhibit 33 and I offer that, your Honor.

THE COURT: Received in evidence.

(Exhibit J-33 was received in evidence.)

MR. FARRELL: I also want to read from part of that. I won't read all of it. I am going to start with the third paragraph.

(Mr. Farrell read from Exhibit J-33 in evidence to the jury.)

MR. MacCRATE: Your Honor, at an appropriate time I would like to read the first two paragraphs.

THE COURT: You can read the balance now if you would like, when part of an exhibit is read, in the interest of completeness.

(Mr. MacCrate read from Exhibit J-33 in evidence to the jury.)

MR. MacCRATE: And then this follows what Mr. Farrell had read.

(Mr. McCrate continued reading from Exhibit 33 in evidence to the jury.)

MR. FARRELL: 38. Durand with a covering letter dated May 18, 1962, provided a letter, also dated May 18, 1962, addressed to Chapman as General Counsel of Puerto Rico Chemical Company, INc., which letters have been marked at pretrial proceedings as Joint Exhibits 34 and 35, which I now offer, your Honor.

THE COURT: Received in evidence.

(Exhibits J-34 and J-35 were received in evidence.)

MR. FARRELL: 39. On May 31, 1962, a memorandum was sent by W. C. Hewitt of Phillips to William W. Keeler, which has been marked at pretrial proceedings as Joint Exhibit 36 and, your Honor, I will offer that and read ffom it.

THE COURT: Received in evidence.

(Exhibit J-36 was received in evidence.)

(Mr. Farrell read from Exhibit J-36 in evidence to the jury.)

THE COURT: I think perhaps I will suspend at this point for the rest of the day.

We will resume at 10 o'clock.

Members of the jury, please resume tomorrow morning and be here in the jury room on this floor at 10 a.m. Don't discuss the case. Keep an open mind.

You may withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: All right, gentlemen, we will be in recess. Be sure you have enough live witnesses tomorrow so we don't run out of work.

MR. FARRELL: Yes, your Honor.

(Adjourned to Tuesday, January 6, 1976, at 10.00 o'clock a.m.)

---

PRUDENTIAL OIL CORPORATION,

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY

January 6, 1975 - 10 a.m.

- - -

(Trial resumed.)

THE COURT: Are you all ready? Let's bring in the jury.

MR. MARKS: May we just have a moment, Judge?

(Pause.)

(Jury present.)

THE COURT: Good morning, members of the jury. You may resume, Mr. Farrell.

MR. FARRELL: Thank you, your Honor.

Continuing where I stopped yesterday, paragraph 39 of the stipulated facts.

On June 5, 1962 Hewitt sent a letter to Brown pertaining to Brown's presentation to Phillips on May 16, 1962, which letter has been marked at pretrial proceedings as Joint Exhibit 37, your Honor, which I offer.

THE COURT: Received in evidence.

I think, to shorten the record, all these Joint exhibits as they're offered may be deemed received.

MR. FARRELL: In other words, I need not wait for you to rule?

THE COURT: You need not wait. There is no objection. They are joint exhibits, as I understand it. Both sides are offering it, is that correct? Right, Mr. MacCrate?

MR. MacCRATE: Yes, your Honor.

THE COURT: What is the highest joint number you have reached?

MR. FARRELL: I can tell you that -- 85, your Honor.

THE COURT: All right, J-37 through J-85, received in evidence. Give them to the clerk during the next recess so he can mark them.

MR. FARRELL: Yes, your Honor.

THE COURT: You may proceed.

(Joint Exhibits 37 through 85 were received in evidence.)

MR. FARRELL: G. The efforts of Chapman and Coan to develop sponsorship for a refinery in Puerto Rico during the summer and fall of 1962.

40. Brown in June 1962 withdrew from further participation with Chapman and Coan in an attempt to develop a refinery in Puerto Rico. Chapman and Coan in

July and August of 1962, explored the possibility of obtaining support for such a venture from a syndicate of investors in Puerto Rico headed by James J. Wilson, who was affiliated with the Insular Investments Corp. Although the Wilson group expressed interest in the proposed project, Wilson did not agree with Chapman's terms for compensation for his services. Before the end of August 1962, Wilson expressed to Coan his lack of interest in proceeding further.

41. On October 25, 1962, Coan sent a memorandum to EDA which has been marked at pretrial prceedings as Joint Exhibit 38.

Now, your Honor, I have finished reading the Stipulation of Facts for the moment and I call my first witness; Mr. Shippee.

THE COURT: For continuity, is there any part of it you want to read at this time, Mr. MacCrate?

MR. MacCRATE: No, your Honor.

THE COURT: All right.

N A T H A N M. S H I P P E E, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to

October 1962, what was your employment at that time?

A I was the chairman of the board of directors of Prudential Oil Corporation.

Q Is that Prudential Oil Corporation a Connecticut corporation?

A It was.

Q What was the business of Prudential Oil Corporation at that time?

A We were venture capital bankers in natural resources. We principally sought money through public securities from the public for oil exploration.

Q Now, Mr. Shippee, was Prudential of Connecticut thereafter dissolved?

THE COURT: That's all been agreed to, hasn't it? You need not prove.

MR. FARRELL: Your Honor --

THE COURT: No, I won't take any evidence of anything that is stipulated, because I have already instructed this jury that they must take as true all facts which are stipulated, and it is quite clear in the stipulated facts that there did come a time when Prudential of Connecticut was dissolved.

MR. FARRELL: Your Honor, I really just wanted to ask that preliminary question.

THE COURT: You needn't. It's a waste of time, Mr. Farrell. Let's get on.

Q All right. I will ask you, Mr. Shippee, I will hand you this document, which is Plaintiff's Exhibit 1 for identification, and ask you to identify it.

A This is a certificate of organization Prudential Oil Corporation.

THE COURT: Which one?

THE WITNESS: Prudential Oil Corporation, State of Connecticut.

MR. FARRELL: I offer it, your Honor.

MR. MacCRATE: No objection, your Honor.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 1 was received in evidence.)

Q Mr. Shippee, I show you a document previously marked as Plaintiff's Exhibit 2 and ask whether that is the certificate of incorporation for Prudential Delaware?

A Yes.

THE COURT: Will counsel approach the side bar, please.

(At the side bar.)

THE COURT: Gentlemen, I will not permit time wasting. The organization of Prudential Delaware is stipulated to and read to the jury. If it is essential for some reason to have this exhibit in evidence, then I am going to rely on the pretrial order and if there is no objection to the exhibit we will put it in evidence.

MR. FARRELL: I agree with your Honor.

Is there any objection to this, the first 20 exhibits?

MR. MacCRATE: Unfortunately you have not told us what they are until this moment so I have no idea.

THE COURT: Do you think I should excuse the jury while we thrash this out? It is going to be time wasting for you to put in documents in evidence that are not argued about.

MR. FARRELL: I couldn't agree with you more.

(Pause.)

(In open court.)

THE COURT: Members of the jury, will you please step out into the jury room and we will resume in just a few minutes.

(Jury left the courtroom.)

THE COURT: I suppose, gentlemen, it would be unusual to have a pretrial order 113 pages in length that doesn't have a few startling omissions. But apparently no one has indicated on the pretrial order and I must say I haven't noticed it until this moment, which of these exhibits are objected to.

Now, it seems from examining them that some of these papers which are indicated as being offered are merely cumulative, unless there is some aspect of the papers which the Court doesn't know about it yet. If you can't make me understand, you won't make these jurors understand this.

MR. FARRELL: I understand that, your Honor.

THE COURT: It seems to me we agreed these were to be numbered and the Court was to get a copy of the exhibits, which I haven't yet received, and as to those to which there is no objection, they ought to be admitted and we will go on to what we are really arguing about in this lawsuit.

As to those to which there is objection, there should have been an indication onthe pretrial order by code or by designation of some sort as to what the objection was so the Court could treat with it.

In the first place, let me get to the numbering. What has been done with the pretrial order?

MR. FARRELL: Your Honor, we have marked all of plaintiff's exhibits starting with 1 and if your Honor --

THE COURT: Running in the same order as in the pretrial order?

MR. FARRELL: Yes.

I was going to suggest during the recess we take your pretrial order and one of us could do that for you and mark it.

THE COURT: I have indicated on the original in pencil for my own use. I have gotten as far as P-2.

MR. FARRELL: We could do that through the plaintiff's exhibits and through the joint exhibits.

(Continued on next page.)

THE COURT: All right, what are these offered to show, and which ones are objectionable?

MR. FARRELL: These are only offered to show, your Honor, the history of the claim and to meet the issue that Prudential of New York is not the real party in interest, which is Mr. MacCrate's claim, and I regard this as totally preliminary. I want to get them in because --

THE COURT: Let's find which ones Mr. MacCrate objects to.

MR. FARRELL: Right.

MR. MacCRATE: Our difficulty arises, your Honor, with respect to the self-serving statements that are contained in the various minutes.

THE COURT: All right. You can have an objection to all the corporate minutes of Prudential, and if it be shown that they are regularly kept in the regular course of business, I am going to overrule the objection, admit them to evidence and you can argue to the jury that they are all self-serving. You can cross examine the man as to who generated the minutes, when they were written, and all those things, if you haven't already done that in your pretrial preparation.

If this is a corporation that was required to keep minutes, and they kept minutes in the regular course

of business, that hurdles the admissibility as far as I'm concerned.

MR. MacCRATE: There are description of the purported claim against Phillips, and the affirmation of that claim in the statements by people recorded in the minutes, and I suggest that simply because someone says something in the course of a directors meeting, that it does not thereby become admissible.

THE COURT: If he really said it, and if the minutes were correctly and accurately recorded, and contemporaneously prepared with the incident, my intention would be to hold them as admissible and you can argue to the jury, and you may cross examine the witness as to the weight.

Now, if there is any issue in this case at this late date as to whether these are bona fide minutes rather than something cranked up afterwards, then you may have voir dire as to any particular exhibit, if you will tell me the number that you want to have voir dire as to.

MR. MacCRATE: As to the Exhibits 1 up to 20, I have no such objection to raise. With respect to Exhibit 20 there is reference to settlement in the document and I believe that that is an inappropriate subject.

THE COURT: Well, that is a different point, isn't it?

MR. MacCRATE: Yes, it is.

THE COURT: May I have number 20 for identification?

MR. FARRELL: Here it is, your Honor.

Might I say, your Honor, that that was prepared before the action was commenced. There was no discussion of settlement --

THE COURT: What page is the settlement discussion on?

MR. FARRELL: Mr. MacCrate is the one --

MR. MacCRATE: The pages are not numbered, your Honor. It commences three pages from the back -- four pages from the back, at the foot of the page:

"The Chairman then stated" --

THE COURT: "--that it would be advisable at this time to call the annual meeting."

Is that what you're talking about?

MR. MacCRATE: No. "The Chairman then stated that all routes to settlement of the dispute with Phillips Petroleum Company had been explored and had failed."

THE COURT: What is the basis for admissibility of that, Mr. Farrell?

MR. FARRELL: Your Honor, in light of Mr. -- first, I think that belongs in the minutes anyway. The lawsuit hadn't started. But secondly, in light of Mr. MacCrate's long opening statement yesterday about how stale this claim is, I think the fact that we were talking up into 1967 is very relevant.

He seems to be making a big point of that. There were conversations up through 1967, and I don't want him to tell the jury how stale the claim is and how long we waited to bring the lawsuit when in fact we were talking through '67.

I myself had not introduced these minutes for that, but that is a double reason why they should go in.

MR. MacCRATE: But, your Honor, to receive these minutes, with this self-serving statement regarding settlement --

THE COURT: You see I think you opened the door on the issue of laches which probably is an issue which is in the case, and I suppose he can show that he proceeded with diligence to assert his claim and you can cross examine him as to exactly what he did.

On this particular matter I believe it would be more appropriate and less prejudicial, the witness is right here, I will let him be asked whether he made a demand

upon Phillips, when he made the demand, and what demand he made, with whom he discussed his demands and when, prior to the initiation of the lawsuit.

Once the lawsuit is initiated you have a slightly different problem.

MR. FARRELL: That is before the lawsuit, your Honor.

THE COURT: I understand that, Mr. Farrell.

Now, after the lawsuit is initiated, and I understand you have a companion lawsuit to enforce the same claims, which are brought in the state courts of the State of New York --

MR. FARRELL: Yes, because of the jurisdictional problem.

THE COURT: There was no objection made during the opening statements, and I didn't feel that it was appropriate for the Court to intrude itself. I don't think that the long delay in bringing this case to trial, only about six months of which, maybe seven months has occurred while it was assigned to me, is a matter with which either side can charge the other. I really don't think that the laches since 1967 -- that there is any evidentiary basis.

The Court just didn't call the case in for

trial. This case was on an individual assignment basis from about 1970, am I correct? It was individually assigned to a judge as a so-called --

MR. MacCRATE: Your Honor, the only time this case was nudged was when it was individually assigned.

THE COURT: When was that?

MR. MacCRATE: In November of 1969.

THE COURT: It was only two years old, and by the standards that prevailed in this courthouse in 1969, that was not unusual.

MR. MacCRATE: But, your Honor, discovery was suspended by the plaintiff in the early months of 1968, and then nothing occurred from then until November of '69 when the Court said, "What are you going to do with this," and then there were no interrogatories served for another six months and no oral depositions for two years.

MR. FARRELL: There were oral depositions taken by the defendant. This suit was litigated by the defendant during that period. Now the fact is that the plaintiff waited until most of the depositions were over.

THE COURT: I believe laches is in the case, but it seems to me that once the action was brought, then the Court might be required to instruct the jury that discovery schedules are set by the Court, attorneys have to comply with

them, and they may not consider within the area of laches anything that took place after the case was assigned to a United States District Judge for all pretrial purposes and for trial.

I just don't see how either of you can blame the other for delay after that date.

MR. MacCRATE: Your Honor, I don't think it is the Court's responsibility to push a plaintiff who is sitting on his hands.

THE COURT: Mr. MacCrate, you couldn't be more wrong. I was brought up in that tradition. That is no longer so.

MR. MacCRATE: Well I understand that for court administrative purposes --

THE COURT: It is a three-way fight.

MR. MacCRATE: There is a requirement that the courts move cases along and it is a very happy develop= ment.

THE COURT: Absolutely.

MR. MacCRATE: I concur. But there is an aspect in this that if a plaintiff is doing nothing, and the plaintiff is sitting back and not pressing, that he's not relieved of responsibility by the virtue of the interest of the court.

THE COURT: I must say I think that after 1969 that is a very thin argument, but let's cut it short. It would be interesting to discuss the philosophy. I will redact from Exhibit 20 the last two lines, beginning with the words, "The Chairman then stated," and ending with the words "had failed" on the next page.

However, neither of you are precluded from examining Mr. Shippee as to what directions he gave, what he did, what he didn't do to pursue the claim or to assert the claim, and also he may be asked what form the claim was asserted.

All those issues are present in the case, and they are proper areas for the oral testimony of the people who know about it. But I will redact from Exhibit 20 that particular self-serving sentence.

Is there anything else we can take care of concerning -- and you need not offer it, by the way, Mr. Farrell; if you want to withdraw it, you will avoid the necessity of redacting it.

MR. FARRELL: I do want to use it on the other issue, the issue originally put in the pretrial order.

THE COURT: What was that?

MR. FARRELL: That was the issue of the propriety of Prudential New York asserting this claim.

And that was the basic purpose. I confess that I don't--

THE COURT: I'm somewhat mystified on that point.

MR. FARRELL: Since I have the burden of proof I don't want to leave a hole in the record.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: May I bring the jury back? Is there anything else we can take care of while they're out?

MR. MacCRATE: I have only reviewed the situation, your Honor, through the first 20 exhibits of the pretrial order at this time. I can very quickly respond --

THE COURT: Do you mean to say -- wait just a minute.

This order has been signed by me on November 19, 195, and you don't know which one of these you're going to object to?

MR. MacCRATE: Yes, I have all of that information noted, your Honor. But I do not know about the order of plaintiff's proof.

THE COURT: All right, let's go forward.

You will both create impatience with the jury if we keep letting them out to have side bar conferences.

Please bring back the jury. Mr. Shippee

should resume the stand.

(Witness resumed the stand.)

(Jury present.)

THE COURT: Exhibits P-1 through P-19 inclusive, are received in evidence without objection.

As to Exhibit 20, I will sustain the objection to the portion to which objection was taken, and it may be received without that portion, if you like.

MR. FARRELL: Thank you, your Honor.

MR. MacCRATE: Your Honor, for the record, I would like to note my objection which I believe I already have, to P-3, P-8, P-14, P-15, P-16, P-17, P-18, P-19 and P-20.

THE COURT: Based solely on a claim of hearsay?

MR. MacCRATE: Yes, your Honor.

THE COURT: That objection is overruled also.

(Exhibits P-1 through P-19, and a portion of P-20, was received in evidence.)

BY MR. FARRELL:

Q Mr. Shippee, what was your background at that time?

THE COURT: Wait just a moment though.

Aren't you going to give us a foundation for

these other --

MR. FARRELL: I'm sorry. I will do that.

THE COURT: I will withdraw my ruling and give you an opportunity to elicit that in front of the jury.

MR. FARRELL: I will do that right now.

THE COURT: What were the numbers again?

(Pause.)

MR. MacCRATE: 3, 8, 14, 15, 16, 17, 18, 19 and 20.

THE COURT: All right.

Q Mr. Shippee, I show you a document that has been marked Plaintiff's Exhibit 3 --

THE COURT: Show him all of them, Mr. Farrell.

MR. FARRELL: Okay.

Q Mr. Shippee, I show you minutes of Prudential Oil Corporation Connecticut and Delaware, and I ask you to tell me -- I will have to -- all right -- Mr. Shippee, were you an officer of these corporations at the time these minutes were made?

A I was.

Q Just look at them, so you know the various corporations, so you can tell me.

A Yes.

Q And were those minutes -- are those copies of the actual minutes of the corporation?

A They are.

Q And were those minutes taken contemporaneously with the meetings to which they refer?

A They were.

Q And were they duly entered in the minute books of the corporation?

A Yes.

MR. FARRELL: Your Honor, I offer them.

MR. MacCRATE: May I, your Honor?

THE COURT: Yes, you may have voir dire as to whether the minutes were regularly kept and genuine.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, by whom are the minutes regularly kept?

A The secretary of the company.

Q Who was the secretary of Prudential Connecticut?

A Parricia Morel.

Q Patricia Morel is now Mrs. Nathan Shippee, is that correct?

A Yes.

Q Who kept the minutes of Prudential Delaware?

A The secretary.

Q Who was the secretary?

A Patricia Morel.

Q Who kept the minutes of Prudential New York?

A The secretary.

Q Who was the secretary?

A Patricia Morel.

Q With respect to the preparation of the minutes did she have the assistance of anyone in recording the minutes of the meeting?

A She was by habit present at the board meetings although not a director. She took the minutes in short-hand, the directors reviewed the draft of the minutes before

they were completed and commented upon at the following meeting, at which time the completed minutes would be entered in the record and annually our auditors, Price Waterhouse & Company reviewed the minutes of all corporations.

Q Price Waterhouse didn't participate in the preparation of the minutes, did they?

A I didn't so state.

Q My question, Mr. Shippee --

A The board of directors participated in the preparation of them upon review and --

Q But the minutes had already been prepared at that time, had they not?

A At every meeting we accepted the minutes of the following meeting.

Q In other words, you went through the normal corporate procedure that at the next meeting you asked if there were any objection to the minutes and you had them accepted by the directors, is that it?

A We went further than that. We prepared the draft and mailed it to the directors so they had it prior to coming to the next meeting and any comments or suggestions or corrections were made at the following meeting and then entered in the record of the company.

Q As far as the phrasing of the various minutes, did counsel for Prudential New York participate in their preparation?

A The words in their preparation, the counsel was generally present at meetings and he would contribute along with any director. Generally the directors do have comments on the phrasing. Our board has always consisted of one or more additional outside lawyers among our outside directors and so that I would feel that the minutes had very close review and were adopted by the whole board at each meeting.

Q And this would be true that the participation of these various people in the phrasing of the minutes both for Prudential Delaware, Prudential Connecticut as well as for Prudential New York?

A Yews, and Price Waterhouse did review them because --

Q Mr. Shippee, I am not asking --

THE COURT: Wait a minute. Please don't volunteer. If the lawyer asks a question that you can truthfully answer yes or no, please do so. If you don't understand the question, of course you can tell him that.

But if you can answer the question yes, do it that way if you can do so truthfully.

All right, you can offer all the exhibits except to the extent previously ruled on concerning Exhibit 20 for identification.

(Plaintiff's Exhibits 1 through 19 were received in evidence.)

(Plaintiff's Exhibit 20 was received as amended.)

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to October 1962 what was your background at that time?

A At that time in 1962 I had completed a tour with the Chase Bank both domestically and internationally.

In 1941 I graduated from college with a degree in business and after some overseas service during the war years I entered the Chase Bank.

Q From there on tell me?

A I was with the Chase Bank for the period until approximately 1949 and thereafter I was a venture capital banker.

I organized two public companies, Impak Systems and Prudential Oil Corporation and I was also active in private corporations generally and I was in natural resources.

Q What was your position, your activity in those

companies?

A I was at one time or another president and chairman and treasurer.

Q Did the natural resources include oil and gas exploration?

A Yes.

Q Mr. Shippee, in October of 1962, were you contacted concerning a proposed petrochemical project in Puerto Rico?

A Yes.

Q Can you tell me how that came about?

A One of our marketing vice-presidents was working with an investment banking corporation, E.M. Warburg & Company in the Wall Street area. The Warburg advised him --

THE COURT: Excuse me, let us not have this kind of an answer. Give the name of the person in the Warburg firm and give the name of the marketing vice-president who worked with the Warburg firm. Firms don't advise people, people tell people.

A (Continuing) John Little, vice-president of Prudential Oil Corporation was working with Warburg, Mr. Gruber of E.M. Warburg and Warburg called attention of the

EDA's refinery project in Puerto Rico to Little who called it to my attention and asked me to attend a meeting in October at the Warburg office to meet the people involved.

Q Tell me, Mr. Shippee, prior to this meeting which I will ask you about, what had you heard or understood about the project?

A Very little.

MR. MacCRATE: I object to what he heard unless there is something --

THE COURT: I suppose I would take this subject to connection but I understand the first -- perhaps I shouldn't say what I understand. I will let Mr. Farrell continue.

MR. FARRELL: Is there an objection?

THE COURT: I overruled the objection. I will take it subject to connection. I think he already answered the question, he heard very little.

Frame another question.

Q Mr. Shippee, did you thereafter attend a meeting at Warburg?

A Yes. I believe October 10, 1962 I met Mr. Jack Coan at the Warburg office with Mr. Little. There was another gentleman I met, Mr. Blinken of the Warburg

Company.

We had a background discussion of the project.

Q What did you understand the project to be at that time?

A The proposition --

THE COURT: Sustained.

I take it you are objecting by the fact that you stand up but when you stand up advise the Court so the record will reflect, Mr. MacCrate.

MR. MacCRATE: Thank you, your Honor.

THE COURT: The Court notices you stand up but you ought to say so.

You can tell what they told him, that I will take; not what his understanding was.

Q What did Mr. Coan tell you?

A Mr. Coan told me that there had been a project underway in Puerto Rico to establish a third refinery to form the basis of a chemical industry and told me that Warburgs felt that Prudential could help them complete the project because one of their principals had dropped out. His name was Mr. Brown. He dropped out to go full-time duty with the Murphy Oil Company.

Q Let me interrupt you there.

Did Mr. Coan tell you who was involved in the

project other than himself?

A Yes. He told us the background of the project, naming people and saying that Mr. Oscar Chapman was still actively involved with the project and needed some oil company to round out the team in order to complete the preparation for an application for an import quota.

Q Do you recall anything else about the statements made to you at the meeting at Warburg on October 10?

MR. MacCRATE: Your Honor, I object. By whom? From whom?

THE COURT: All right. Consider the question as amended.

Any discussions have to be identified, who the speaker was, who was present and when and where.

MR. FARRELL: That is correct.

Go ahead.

A The discussion was, first of all, a presentation of the project background.

Q Who made the presentation?

A Mr. Coan made the presentation to Mr. Little and to me.

We had questions because we had our own projects underway and we didn't really see at that moment how we could contribute because --

THE COURT: Not what you thought, please. If you told Mr. Coan that in words or in substance you may testify to that effect. But don't give the operation of your mind.

Frame another question, Mr. Farrell.

Q Did you tell anything to Mr. Coan at that time?

A Yes. We discussed the fact that as an oil company we were a venture capital company. We did not have reserves of crude oil and did not want that. We wanted it to be understood, we didn't have crude stocks to back up a refinery. That was --

MR. MacCRATE: Your Honor, I object again to the witness talking about what he wanted.

THE COURT: I understood the witness to say this is what he told Mr. Coan. If that is so I will permit the answer to stand.

THE WITNESS: It is so.

THE COURT: If it is merely what he is thinking privately it is stricken.

Q Was this discussion what you told Mr. Coan, Mr. Shippee?

A Yes. We waned to be sure --

THE COURT: Just tell us what you told Mr. Coan or had told the people at this meeting.

A That we were not an oil company with reserves of crude oil for a refinery; that we were a venture capital company and that our personnel were engaged in marketing activities, not in operating refineries.

Q Do you recall anything further that was said at the meeting and if you do tell us who said it and what he said, still calling your attention to the meeting at Warburg in early October, 1962?

A We had another objection which we voiced in regard to the amount of money that would be requirec for the project and we were assured by Mr. Coan that the amount of money would be small in the way of seed money but that the large amount of money to be raised would be handled after the import quota was received.

Q Do you recall anything else about that meeting, Mr. Shippee?

A Yes. It was pointed out that --

Q Who pointed it out?

A Mr. Coan pointed out to us that his understanding of our organization, it would be suitable for carrying out the project and we told him that we would look into it and make a decision. We did not give him a decision at that meeting.

Q Thereafter, Mr. Shippee, did you give Mr. Coan

or the other members of the group a decision as to whether you would participate?

MR. MacCRATE: Objection, your Honor.

THE COURT: Yes.

What did he say, where and when and whom?

A On the following day we talked with Mr. Thomas Young who was a participant of ours in --

MR. MacCRATE: Objection, your Honor. The witness is saying ours and we talked.

THE COURT: I understand that. I will strike out the answer.

Frame another question.

Q Mr. Shippee, what did you do then?

A On the following day we discussed the project as we understood it in Prudential Oil Corporation and I contacted Mr. Thomas Young --

MR. MacCRATE: It is the same problem, we, without identifying who the people are.

THE COURT: All right, frame another question, Mr. Farrell.

Q Mr. Shippee, who in Prudential did you discuss it with?

A On the following day I discussed the previous day's discussion with Mr. John Little, Mr. Ed Willey of

Prudential Oil Corporation.

Q What was his position?

A Mr. Willey was president, Mr. Little vice-president. And following the discussion I called Mr. Thomas Young who was a chemical engineer who we previously knew as an investor of ours, and also discussed with Mr. Young what we had heard and our understanding of it at that meeting and asked him if he would join Prudential Oil Corporation as a consultant if we considered this project and would he undertake it with us.

I was principally concerned --

Q Never mind that. What did Mr. Young say to this?

A Yes.

Q What did you do next in connection with this project?

A I then called that same day Mr. Gruber of E.M. Warburg and told him that we were now considering a chemical engineer as consultant: that I wanted to meet with Mr. Coan and he agreed that it was appropriate.

I then called Mr. Coan and arranged for Mr. Young and myself to meet Mr. Coan and we met that same day.

Q Thereafter did you speak to Mr. Robert Anderson?

A Yes.

Q Let me interrupt you there.

Did you know Mr. Robert Anderson at that time?

A Yes. I had previous contact --

THE COURT: Please don't volunteer. The answer is yes you knew Mr. Anderson.

Q Tell us were you a business associate of Mr. Anderson?

A Yes.

Q In what way were you a business associate of Mr. Anderson?

A In real estate ventures and in projects.

(Continued on next page.)

Q Can you tell us what kind of projects, if you know or remember?

A Well, looking for new business opportunities.

Q Was Mr. Anderson the former Secretary of the Treasury?

A Yes.

Q Did you speak to Mr. Anderson about this project early in October of '62?

A Yes.

Q What did you tell Mr. Anderson?

A I described the discussions with Mr. Willey and Mr. Little and Mr. Young, and asked his advice as to whether Prudential Oil Corporation, in his opinion, could handle this project.

Q And what did he say?

A He felt that it would --

Q What did he say, not what he felt.

A Yes.

Q And did you ask Mr. Anderson to participate in the project with you?

A Yes.

Q Did he agree to do that?

A He did.

Q And thereafter, was there a meeting at

Mr. Anderson's office?

A Yes.

Q Who was there? I'm talking again early October '62 or November '62. If you can tell me when the meeting was that would be helpful.

A I would like to go back, if I may, to develop --

THE COURT: No, please don't. Let the attorney conduct the examination, Mr. Shippee.

A I'm trying to recall the date.

Q Do you recall the approximate date?

A Approximately the first week in November.

Q Of 1962?

A Of 1962.

Q Can you tell me who was at the meeting?

A Yes. Mr. Shea, who was involved with Warburg and Kuhn Loeb and I believe he was from Kuhn Loeb in the financing, and myself.

Q Anyone else?

A I believe Mr. Willey.

Q Was Mr. Young there?

A I would like to refresh my recollection. I believe I prepared a letter for that meeting.

Q Mr. Shippee, I show you a document that has

been marked Plaintiff's Exhibit 67, and I will refer to the prior marking, which has been marked also as D-10 at the pretrial proceeding. The date is November 9, 1962.

MR. FARRELL: Your Honor, the exhibits are in chronological order.

THE COURT: This is 67?

MR. FARRELL: Yes, the number is 67.

THE COURT: All right.

MR. FARRELL: The date is November 9, 1962, and for the record, I will say that in each case, so that you can follow it.

THE COURT: All right.

Q I show you this document, ask if that refreshes your recollection with respect to the date of the meeting and who was present.

A Yes, this is the meeting, it is dated November 9th. It was the same day. And Mr. Shea of Kuhn Loeb was present. I would recollect that Mr. Young and Mr. Willey were also present with me.

Q You remember the content of the discussion, Mr. Shippee?

A I do.

Q Now, will you tell us the discussion and, as before, tell us who said what. Where was that meeting,

at Mr. Anderson's office?

A The meeting was in Secretary Anderson's office in New York City, Rockefeller Plaza. The meeting was to cover the four points --

MR.MacCRATE: Your Honor, I object as to what the purpose of the meeting was.

THE COURT: Yes, I will strike that out. Please pay attention to the questions.

Frame another question, Mr. Farrell.

Q Mr. Shippee, what was discussed at the meeting and tell us who said what.

A The meeting discussed the financing --

THE COURT: Just tell us who said what to whom, the substance of the discussion.

A I reviewed with Mr. Anderson the progress to date, and the financial plan that was based upon getting firm commitments from chemical companies in order to get the import quota in Washington.

We also required a crude supplier to replace the Murphy oil supplier, and we asked Mr. Anderson's direct help in locating a crude supplier for the refinery.

Q And did Mr. Anderson respond to that?

A Yes. Mr. Anderson reviewed with us several oil companies that could perform that position and in

particular expressed his opinion in favor of Phillips Petroleum for the reasons that they had distribution in Florida, they did not have an east coast refinery, they were a strong chemical company themselves, and would be then in all respects appropriate.

MR. FARRELL: Your Honor, I would like to offer Exhibit 67 at this time.

MR. MacCRATE: No objection, your Honor.

THE COURT: Received in evidence.

(Exhibit P-67 was received in evidence.)

THE COURT: Is that DX-10 on page 73?

MR. FARRELL: Yes, your Honor.

Q Now, Mr. Shippee, during this period, did you have any contact with Mr. Gruber or Mr. Shea of Warburg and Kuhn Loeb?

A Yes.

Q Tell me what happened with respect to those gentlemen.

A Our contacts, my contact with Mr. Shea and with Mr. Blinken and Mr. Gruber were related to raising the seed money to pay for the services necessary until a public issue could be --

MR. MacCRATE: Your Honor, I object to general discussion of what it was he was doing. The question

called for him to identify the contents.

THE COURT: Frame another question, please.

Q What did you say to Mr. Gruber and what did he say to you or to Mr. Shea; tell me what he said and what they said.

A Mr. Shea outlined a plan of having $300,000 to pay for the advance expenses, and I suggested that that was unnecessary, that a much smaller amount of money would be all that was required since we would perform all of the services ourselves. We wouldn't go out and hire someone else. We would perform the services, and that the $300,000 was not required for the project as I understand it.

Q Did you have any further conversation with Mr. Shea or Mr. Gruber in that connection?

A Yes.

Q Tell me what it was and who said what.

A I agreed with --

MR. MacCRATE: May we fix the time, too, please?

THE COURT: Yes, let's fix the time.

THE WITNESS: This would be within the first week after October 10th, approximately October 17th or 18th. There were two meetings in one day in the office of Warburg, and this discussion was held on that day in their

office, and having volunteered that suggestion, which they accepted, I then agreed with Mr. Gruber of Warburg that we, Prudential Oil Corporation and E. M. Warburg, would jointly --

MR. MacCRATE: Is this a conversation, your Honor? It doesn't sound to me like a conversation.

THE COURT: Well, I can't tell until the witness finishes his answer. But I'd like to direct the witness, please, give the substance of conversations. Don't give legal conclusions to the effect "we agreed." That's for the jury to decide, whether you agreed or not. Just tell us what you said and what Mr. Shea said and anybody else who was present at this meeting. The date, time, place, who was present, and the substance of the conversation, and the jury will determine whether anybody agreed on anything.

A (Continuing) I then advised Mr. Warburg --

THE COURT: Let Mr. Farrell frame another question so we get it straight.

Q Well, again, what did you say to Mr. Gruber or Mr. Shea on that subject?

A I told Mr. Gruber that Prudential Oil Corporation would pay for the advance costs with Warburg & Co. and supply all of the services which would otherwise be

funded by their suggestion.

Q And what did Mr. Gruber or Mr. Shea or either of them say to this?

A Mr. Gruber agreed with --

THE COURT: No, no, no. Please, pay attention.

Q What did he say?

THE COURT: What did he say?

A Mr. Gruber said "Yes."

Q And did Mr. Shea say anything?

A No.

Q Did he make any sound or motion that he disagreed?

A Mr. Shea agreed.

Q Don't say "agreed."

A I'm sorry.

THE COURT: If Mr. Shea kept silent, the jury may infer from his silence that he found the suggestion satisfactory. Let's go forward.

Q Now, Mr.Shippee, did you thereafter have another meeting with Mr. Anderson?

A Yes.

Q At about what day was that meeting?

A We had almost daily meetings with Mr. Anderson.

Q Well, I call your attention to a meeting within a day or two after the meeting on November 9th that you just described.

A At the meeting on November--

Q Tell me first, did you have a meeting with Mr. Anderson within a day or two of the meeting you just described?

A We had almost daily meetings with Mr. Anderson.

Q I understand that, but did there come a time when you had a meeting with Mr. Anderson, a day or two after the one you described, where Mr. Shea and those people were present, with Mr. Anderson; did a meeting occur between you and Mr. Anderson?

A Yes.

Q That was a day or two after the meeting that you've described, is that correct?

A I rode home with him every night and I met with him almost every day and I don't know which meeting you're referring to.

Q There was a meeting with Mr. Willey and Mr. Wright and Mr. Anderson within a few days of --

A That was on the same day -- if that was the day that Mr. Anderson put through a telephone call to

Oklahoma.

MR. MacCRATE: I object, your Honor, and move that that be stricken.

THE COURT: I will allow it to stand. If he's trying to fix the date.

MR. MacCRATE: But the witness did fix the date of the meeting with Mr. Warburg, or at the Warburg office on either October 17th or 18th, and that I believe is the date that we are referring to.

MR. FARRELL: No, it's not. He fixed the date of November 9th and --

THE COURT: I overrule the objection. Frame another question.

Q Mr. Shippee, calling your attention to the meeting with Mr. Anderson, to which you just referred, did that occur on November 9th, subsequent to the meeting to which you have testified?

A I believe it did. That is my recollection.

Q Who was at the second meeting, that is, the second one on November 9th?

A Mr. Willey and myself.

THE COURT: And who else?

THE WITNESS: Mr. Anderson, in Mr. Anderson's office.

Q Anyone else there?

A I don't recall.

Q What did you say to Mr. Anderson at that time and what did he say to you?

A I said to Mr. Anderson that the necessity to chose the oil company was paramount and he said to me that Phillips would be the best choice in his opinion because a decision could be promptly made at the top and because it would be a contribution to their development of a market in the east coast.

Q And did he do anything at that time?

A After we had further discussion of Phillips as compared to other oil companies, we agreed that Phillips would be the --

Q Don't say "we agreed."

A I stated that Phillips would be the best choice, in my opinion, and asked him if he would put through a call and determine their feeling.

He instructed a secretary to put through a call, and the secretary put through a call and then came in and advised us that Mr. Adams was not in his office, and Mr. --

Q Let me stop you there.

Who was Mr. Adams?

A Mr. Adams was the chairman of Phillips Petroleum Company.

Q What did the secretary say?

A That Mr. Adams was not in his office.

Q What did Mr. Anderson say?

A Mr. Anderson said to leave the call in.

Q Thereafter, did Mr. Anderson advise you that he talked to Mr. Adams or Mr. Learned?

A Yes.

THE COURT: You see, you have given him a compound question. Is it Adams or is it Learned?

MR. FARRELL: Either one.

THE COURT: That's no good. Frame it separately.

Q Did he say he had spoken to Mr. Learned?

A Yes.

Q Who was Mr. Learned at that time?

A Mr. Learned was the president of Phillips Petroleum Company.

Q. And thereafter did Prudential receive a letter from Phillips Petroleum Company signed by Mr. Learned?

A Yes.

Q I show you a document that has been marked as -- this is dated November 13, 1962, and it is Plaintiff's

69, and previously marked Exhibit 9, Plaintiff's 9.

A Yes.

MR. FARRELL: Your Honor, I offer this.

MR. MacCRATE: No objection.

THE COURT: Exhibit P-69 received in evidence.

(Exhibit P-69 was received in evidence.)

Q Now, Mr. Shippee, during this period -- I'm talking about October, late Ocrober, early November -- did you meet with Mr. Chapman?

A Yes.

Q And do you recall where that meeting was and when it took place, approximately?

A It was in New York City. It was in the offices of E. M. Warburg. It was on a Monday. I believe it was October 22nd.

Q Can you tell me who was present at that meeting?

THE COURT: Excuse me, before you go on further, is that P-69 a one-page document?

MR. FARRELL: It is a two-page, it has a newspaper article attached to it.

THE COURT: That was intended to be the offer?

MR. FARRELL: It is the way it was produced.

MR. MacCRATE: I'm not aware of the newspaper attachment.

No, I do not agree, your Honor, to the inclusion of that newspaper clipping that comes from 1965. I was not aware of that.

THE COURT: It will be separated from the document and marked as Exhibit 69A for identification.

(Exhibit P-69A was marked for identification.)

Q Mr. Shippee, do you recall who was present at the meeting of October 22nd that you have just referred to?

A Secretary Chapman, myself, Mr. Young, Mr. Willey, Mr. Gruber, Mr. Blinken, Mr. Shea, I believe there were some others that came in during the meeting. I don't recall their names.

Q Now, do you recall what was discussed at the meeting? Just say yes or no.

A Yes.

Q Now, tell me, to the best of your recollection, who said what at that meeting?

A Mr. Chapman thanked us for Prudential's willingness to undertake the project and he then outlined the steps that would now follow by saying that a schedule

of one month's intensive work in preparing the marketing studies and the application for the import quota would suffice, and thereafter there would be a waiting period of two or three months while the oil administration considered it, and we should have the application acted upon by the first quarter of the next year.

But that he emphasizes, in laying out the schedule, that we would have to devote intensive effort for the next few weeks in order to accomplish this schedule.

Q Tell me what else he said, if anything?

A He also stated that we would have to put our full efforts on getting a firm commitment from a chemical company, to satisfy the oil administration that this would not be just a third refinery, but that there would be a basis for forming a chemical industry in Puerto Rico.

Q Did you say anything at that meeting, Mr. Shippee?

A Yes.

Q Tell me what you said.

A I told him that we were prepared to spend the time and effort. I told him that we had added to our group, Secretary Anderson's and that we were already soliciting the chemical companies to get a firm commitment.

Q Do you recall anything further about the

discussion at that meeting, Mr. Shippee?

A Yes.

Q Tell me who said what.

A Mr. Chapman told us of his compensation arrangements and we agreed to carry them out. He told us that --

MR. MacCRATE: Your Honor, I think we have to have more than just, "he told us about his compensation arrangements."

THE COURT: Well, you will have a chance to cross examine as to what they were, Mr. MacCrate. I will permit this witness to say that he told Mr. Chapman that his request was acceptable. You can cross examine as to how much money it was.

A He told us that he would need money for the preparation of the brochure, for the use of his law firm's time, and for travel and incidental expenses and we agreed to pay them.

Q Do you recall anything else at that meeting, Mr. Shippee?

A No. That was the substance of the meeting.

Q Did Mr. Gruber or anyone ask you for a resume of Prudential Oil's qualifications at that meeting?

A That was a request made separately from the

meeting by Mr. Gruber.

Q Did you thereafter prepare such a letter or resume?

A We did.

Q I show you a document previously marked Plaintiff's Exhibit 57, dated October 23, 1962, previously marked D-682C.

THE COURT: What is the present number?

MR. FARRELL: Present number is 57, your Honor.

Q Mr. Shippee, is this a draft of this letter that you prepared in response to that request?

A Yes.

Q Tell me, did you work with anyone preparing that letter?

A Yes.

Q With whom did you work?

A I worked with Mr. Little of Prudential Oil and Mr. Willey of Prudential Oil.

Q Did you also work with Mr. Coan?

A Mr. Coan reviewed the document after we had drafted it and made some changes to it which were included in the final draft, the final copy that was sent.

Q Calling your attention to the letter itself,

not the resume, is that a copy of the letter that was sent?

A This letter is dated October 23rd, addressed to Walter Gruber, and that was the letter that was sent

MR. FARRELL: Your Honor, I offer this.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, I call your attention to the markings that appear on the third page of the exhibit, and upon the fifth page of the exhibit, and the sixth page, and ask you if you can identify whose handwriting that is.

A As I recall that is Mr. Coan's handwriting.

Q Was that handwriting on the document at the time you prepared it or was it subsequently added?

A I don't understand your question.

Q Well, is this a document that you prepared, Mr. Shippee?

A Yes.

Q And did you see Mr. Coan write on the document?

A No.

Q So you cannot explain how that handwriting happens to appear on that document.

A We asked for his help in reviewing the document and it came back to us from him.

Q Well, did you change the document that you sent to Mr. Gruber based upon Mr. Coan's comments?

BEST COPY AVAILABLE

A Yes.

Q So that this document that is attached to this copy of the letter is not the one you sent to Mr. Warburg, is that correct?

A That is correct.

Q To Mr. Gruber of Mr. Warburg's office, you understand my question?

A Yes, I did.

Q So that the attachment does not belong with the copy of your letter to Mr. Gruber?

MR. FARRELL: I object to that.

MR. MacCRATE: That is permissible voir dire.

A It belongs with the letter. A final draft was sent with this letter to Mr. Gruber as corrected.

MR. MacCRATE: On the basis of the witness' statements, your Honor, this particular exhibit is not appropriate evidence of what was sent to Mr. Gruber.

THE COURT: It appears that at least as to the attachment according to this witness the attachment is not what was sent to Mr. Gruber.

MR. FARRELL: As to the attachment only, your Honor.

THE COURT: Do you want to offer the letter separately from the attachment?

BEST COPY AVAILABLE

MR. FARRELL: Yes.

THE COURT: It may be separated and marked 57A and B, and I will receive 57A, if there is no other objection asserted to it.

MR. MacCRATE: No objection, your Honor.

(Exhibit P-57A was received in evidence.)

BY MR. FARRELL:

Q Now, Mr. Shippee, I show you a document which has been previously marked Plaintiff's Exhibit 58, dated October 23, 1962, previously 461, and ask if these are copies of the memorandum as revised which was actually sent with the letter which has been introduced as Exhibit 57.

A Yes.

MR. FARRELL: Your Honor, I offer those.

MR. MacCRATE: No objection, your Honor.

THE COURT: 58 is received.

(Plaintiff's Exhibit 58 for identification was received in evidence.)

Q Mr. Shippee, what did you do next in connection with the proposed project?

A I met with Mr. Young to review the chemical companies that might be considerec candidates and Mr. Young, Mr. Willey and myself then proceeded to contact them in regard to it.

Q Tell us a little more detail if you will.

Where did these meeting take place between you and Willey and Young?

A In the office of Prudential Oil Corporation in New York City.

Q Can you tell us some or all if you can of the companies that you contacted?

A We contacted Mobil, Chemical Division.

We contacted Hercules; we contacted Monsanto; we contacted Allied Chemical, amongst others.

Q What was your purpose in contacting those companies?

MR. MacCRATE: I object to the purpose, your

Honor.

THE COURT: Well, I will take it subject to connection. His purpose was to sell the petrochemical product.

A To seek a firm commitment that they would establish a plant to use a specific feed stock. We needed customers who would commit to --

THE COURT: The purpose was to get them to agree to buy the output, isn't that right?

THE WITNESS: The feed stock, yes, sir.

MR. FARRELL: There is more than that, your Honor.

THE COURT: You may develop it subject to connection.

Q What was your purpose, Mr. Shippee? What did you want them to do?

A We wanted them to commit to build a plant and to take part of the output of the refinery so that we could take this committment as an integral part of the application for the import quota to the oil administrator in Washington.

Q Did you receive any such commitment from any of those companies?

A No.

Q Mr. Shippee, did you thereafter consider changing the proposed project in any way?

A Yes.

Q Tell us what you did?

A We called a meeting including Mr. Young, Mr. Willey, Mr. Little and myself to discuss our failure to get any commitment from any of the chemical companies that collectively we had contacted.

Q About when was this if you recall, Mr. Shipee?

A This was about a week later, about the end of October; just at the end of October.

Q Proceed.

A We then went over the complete project, starting with the concept that had been laid out in the earlier attempts with focusing on the core refinery and satellites and trying to --

Q Can you explain --

MR. MacCRATE: Is this descriptive of a meeting that was held among these people?

THE COURT: That is my understanding.

A We were searching for new ideas.

Q This is the subject matter of the meeting?

A It was, searching for new ideas.

THE COURT: Is this meeting being connected in

any way with Phillips?

MR. FARRELL: Yes, your Honor.

THE COURT: I will take it subject to connection. Right now there is nobody from Phillips present at the meeting. Let us go on.

THE WITNESS: This is prior to the Phillips selection and telephone call to Phillips.

We were seeking some other way to go about our work.

MR. MacCRATE: Your Honor, I am going to object. This is just a general discussion in the absence of Phillips about what they were thinking about doing.

MR. FARRELL: Your Honor, Phillips -- it is not necessary that Phillips be at the meeting.

THE COURT: I will excuse the jury if I am going to hear argument.

The jury may step out to the jury room, please.

(Jury left the courtroom.)

MR. MacCRATE: Your Honor, I have been allowing certain questions to go on so that this record could be developed as to the general course of events. But when we turn to matters of this sort and start getting into what is going on in the mind of Mr. Shippee and what he is saying to others out of the presence of anyone from

Phillips, Phillips is wholly a stranger to the conversation, I don't think that this is appropriate evidence at all.

MR. FARRELL: Your Honor, this just goes to a separate part of our case. The proposition is that we developed a different concept for the petrochemical project, that we developed it. We didn't develop it in the presence of Phillips but I am showing that it was, when that was developed. We thereupon showed it to Phillips to go on with the results that we claim happened.

THE COURT: I will permit this witness to testify that he had meetings and what the topics of the meetings were.

However, I am doing so on your assurance already given to me on this record that you can connect it with Phillips. You told us I believe in an open statement that Mr. Anderson had an agency relation ship with Phillips.

Apparently I can infer from what I heard and read in this case that eventually Chapman had some kind of connection with Phillips. Obviously what this witness imparted to Anderson may be admissible on this ground and what he imparted to Phillips directly to Mr. Learned or Mr. Anderson is going to be admissible and perhaps the same rationale would pertain to Mr. Chapman.

There is another aspect of it which the Court is aware, the fact that he had a meeting and what the subject matter of the meeting was, when it took place and how long it took place and who attended, may relate to his damages because it may be some assistance to the jury in computing the value, if anything, of what he did.

If he was generating a plan or an idea as the pretrial order says, legally protected concept or material conceived, formulated or developed, that is the word of the statement of the issues to be tried. If evidence of the value of those ideas may be measured, at least in some part by how many people conceived them, who they were, how long it took them to work it out and when and where and how they did it but I don't feel inclined to take a great deal of hearsay discussion in the absence of Phillips and it is not binding on Phillips unless I have some real assurance you can connect them up.

MR. FARRELL: So I don't misstate my position, the evidence that I am seeking to introduce now is simply an attempt to show that there were meetings among the Prudential group, that at these meetings they discussed revising the concept presented to them earlier.

They took time to discuss this and that they developed from that as the days went on a separate concept.

THE COURT: I am taking all that if you will show me and give me an assurance on this record that you can show me that in some fashion the product of all these discussions was laid at the door of Phillips.

MR. FARRELL: Your Honor, absolutely.

THE COURT: All right.

Have I covered the question fully?

MR. MacCRATE: your Honor, I would think that should be stated at this time, in what manner that connection is going to be made by the plaintiff.

THE COURT: If it can't be made I will have to strike out this testimony and you may even be in a position where I will invite a motion for a mistrial if it is too much.

MR. FARRELL: Your Honor, we can be pretty clear on that.

THE COURT: You have had a good many years of pretrial discovery and you ought to know by now how you lay this material at the door of Phillips.

MR. FARRELL; Of course I will tell you. This is laid at their door by discussions with Mr. Anderson, by discussion with Mr. Fischbeck, by the delivery of brochures containing the ideas with Mr. Fischbeck's revisions to the brochures giving them back.

We are sending brochures to Mr. Chapman who delivered them to Coan and he delivered them -- shall I go on?

THE COURT: You are claiming an agency on the part of Anderson and Chapman or both?

MR. FARRELL: I don't claim -- Chapman had been a member of our group at first. He later -- we still considered him a member of our group when he became retained by Phillips. The fact that Chapman had been a member of our group, the brochure, the final copy of the brochure --

THE COURT: Did he give them Phillips?

MR. FARRELL: He did, yes, he did.

THE COURT: Can you show that?

MR. FARRELL: Because it turned up, a copy, in Phillips' files.

THE COURT: I think that is an adequate offer of proof. Permit me to take these matters subject to connection.

MR. MacCRATE: Your Honor, what is finally in a document is one thing but all of the steps along the way, of discussions amongst strangers to Phillips is no part --

THE COURT: They have to generate this, don't

they, Mr. MacCrate? It took work initially, putting work in on it and you give it a value and I think within reason -- I am not going to spend a long time on it -- within reason he can tell us about these meetings discussing this problem. I am not going to take those conversations. And as a result of the meetings they concluded to inform Anderson or Chapman or the Government or whoever they concluded to inform, they were revising the approach to the problem. That much they are permitted to show.

I ask you not to string it out. I don't think you have yet but I don't want to get is strung out.

MR. FARRELL: I understand, your Honor.

THE COURT: All right, let us be in recess.

(Recess.)

THE COURT: Bring in the jury, please.

(Jury present.)

THE COURT: Mr. Farrell, you may resume.

MR. FARRELL: Thank you, your Honor.

BY MR. FARRELL:

Q Mr. Shippee, can you tell me how much time you were spending on the project at that time?

A All of our time. That was the thing we were working on.

Q You were spending full time on the project?

A Yes.

Q How about Mr. Willey?

A Mr. Willey was the president of the company. He had other duties, but he was spending a principal amount of his time --

MR. MacCRATE: Your Honor, I'm going to ask that that be stricken. Mr. Willey is going to be a witness and --

THE COURT: Well, if this witness knows that Mr. Willey was spending time, he may so testify.

Q Did you finish your answer?

THE COURT: I think he did. Let's go forward.

Q How about Mr. Young?

A Mr. Young was spending all of his time on the project.

THE COURT: Was he an employee of Prudential?

THE WITNESS: No, he was a consultant at that time to Prudential. He was never an employee.

Q Mr. Shippee, during the period we are talking about, in November of 1962, did you or any member of your group discuss the project with Phillips?

A Yes.

Q Can you tell us who and approximately when?

A Mr. Young discussed the project with Phillips in the middle of November. Mr. Anderson discussed the project with Phillips in November.

MR. MacCRATE: I am going to ask that the answer be stricken unless this witness was present.

THE COURT: Yes. Motion granted. The answer is stricken out unless there be a showing that he was present at the time and place and the person in Phillips is named.

Q Did you, Mr. Shippee, receive reports from various members of the group?

A Yes.

MR. MacCRATE: I object to whether he received reports.

THE COURT: I will let that stand, but I am not going to take hearsay indirectly in that fashion. If he knows of his own knowledge by having been present --

MR. FARRELL: We will come to that chronologically, your Honor.

Q During this period, Mr. Shippee, did you prepare a rough outline of your proposal or any part of your proposal?

A Yes.

Q I show you the document that has previously been marked Plaintiff's Exhibit 63 for identification.

MR. FARRELL: The date your Honor, is November '62, no day, and it has previously been marked P-523.

Q I ask you if that is the outline you referred to.

A Yes.

Q Can you tell me who prepared this?

A I had it prepared.

THE COURT: No, who prepared it is the question.

Q Who prepared it?

A I prepared it.

Q Was this as a result of discussions with

Mr. Young and Mr. Willey?

A It was.

MR. FARRELL: Your Honor, I offer this.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, what is the fourth page of this document?

A The fourth page is a memorandum from Warburg, reciting a meeting held in their office on November 7th.

Q And therefore what you have testified to in response to questions from Mr. Farrell in no way relates to the fourth page of the exhibit?

A Correct.

THE COURT: Is that the last page, the fourth page?

MR.FARRELL: No, it is in the middle, your Honor.

THE COURT: All right.

Q The fifth page of the exhibit, what is that?

A It is a schematic diagram of the feedstocks from the refinery.

Q This schematic diagram was prepared by whom?

A I prepared it.

Q When did you prepare it, Mr. Shippee?

A At that time.

Q When you say "at that time," can you fix approximately the date for us?

A Approximately November 7, 1962.

Q And when on November 7th or thereabouts in 1962 you prepared the schematic diagram, the last page of the exhibit, did you attach that to the first three pages of the exhibit?

A Yes.

Q However, the fourth page was a subsequent addition, is that correct?

A Yes.

MR. MacCRATE: I have no objection, your Honor, to the admission of the first three pages and of the fifth page.

THE COURT: All right. I will have the fourth page removed and marked Exhibit 63A for identification. There is no objection to Exhibit 63 as modified.

(Exhibit P-63 was received in evidence.)

(Exhibit P-63A was marked for identification.)

BY MR. FARRELL:

Q Mr. Shippee, did there come a time when you met with representatives of the EDA?

A Yes.

Q Can you tell me where that meeting took place?

A In their offices in San Juan.

Q Is that San Juan, Puerto Rico?

A In Puerto Rico.

Q Did you travel to Puerto Rico in connection with this project?

A Yes.

Q And about when was that, Mr. Shippee?

A That was towards the end of November, perhaps November 28th.

Q '62?

A 1962.

Q Did any other member of the group that you were working with accompany you on that trip?

A Yes.

Q And who was that?

A Mr. Young and Mr. Coan.

Q And in Puerto Rico, whom did you meet with?

A We met with Mr. Diaz Hernandez.

Q What was his position?

A He was the director of the EDA for Continental United States.

Q And did you discuss the proposed petrochemical

complex with him?

A Yes.

Q Who else did you meet with?

A We met with Mr. Van Hyning and with Mr. Durand.

Q Who was Mr. Van Hyning?

A Mr. Van Hyning was a consultant to EDA for refinery.

Q And who was Mr. Durand?

A Mr. Durand was the director, the head of EDA.

Q And did Mr. Young -- what did Mr. Young do, if you know, in connection with the project while he was in Puerto Rico?

A Mr. Young participated in the meetings of the first day. On the second day I went back over the project details and the operations room with Mr. Diaz Hernandez, and Mr. Young flew in a small aircraft around the island with Mr. Van Hyning, looking at possible port sites.

Q And on the third day, Mr. Shippee, did you have meetings with representatives of the EDA?

A Yes.

Q How much time did these meetings take?

A Through the day and into the evening.

Q Were these meetings, all of them concerned with the petrochemical complex, proposed?

A Solely.

Q And Mr. Coan was with you during the entire three days?

A Yes, and he stayed, after we left, for at least another day, I'm not sure; if longer.

Q Now, Mr. Shippee, after you returned from Puerto Rico, did you talk to Mr. Anderson?

A Yes.

Q And did you report to him the results of your trip to Puerto Rico?

A Yes.

Q I show you a document which has previously been marked as Exhibit 73, and the date is December 6, 1962, the previous number was 44E, and ask you if this is a copy of a document which was in the file maintained by Prudential during December, 1962 with respect to the project.

THE COURT: Which old number is it?

MR. FARRELL: The old number is 44E, your Honor, D-44E.

THE COURT: And the present number?

MR. FARRELL: The present number is 73.

THE COURT: That is a letter, Van Hyning to

Coan?

MR. FARRELL: Right.

A Yes.

Q Was that letter received or a copy of that letter received by Prudential in the ordinary course of business, working on this project?

A Yes.

MR. FARRELL: Your Honor, I offer this letter.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-73 was received in evidence.)

Q Upon your return to New York, Mr. Shippee, did you then meet, again, with representatives of EDA?

A Yes, we did.

Q Where did that meeting take place?

A In their office in New York City.

Q 666 Fifth?

A 666 Fifth.

Q Did Mr. Anderson meet with any of the representatives of EDA?

A Yes.

Q Was that at about that time in December of '62?

A No, I believe that would have been after Christmas, in January of '63, when we had a meeting with Mr. Anderson and Mr. Durand who came up from Puerto Rico.

Q How about a meeting with Mr. Diaz, didn't Mr. Anderson meet Mr. Diaz?

A I was not at that meeting. I know they held a meeting, but I was not present at the meeting.

MR. MacCRATE: I object, your Honor.

THE COURT: He says he knows they had a meeting. I will allow that answer to stand.

Q During this period in December of 1962, did you continue to work on the project?

A Yes.

Q Did this continue to be full time?

A Yes.

Q Did there come a time when Mr. Shea made any proposals concerning the financing of the project?

A We had a --

Q Just answer --

A Yes.

Q Can you tell me how that came about?

A Yes.

Q Okay, tell me.

A We had assigned different parts of the

application for an import quota to different people. We had assigned the financing plan to Mr. Shea.

MR. MacCRATE: Your Honor, unless we relate this to place and time, we are going to have --

THE COURT: Yes. Is it in writing, a financing plan?

MR. FARRELL: I was just laying the foundation.

THE COURT: I don't think you need to. If there is no objection to the document, just show it to Mr. MacCrate.

MR. FARRELL: I don't know if there is any objection.

THE COURT: Ask him. Let's save time.

MR. MacCRATE: No objection, your Honor.

MR. FARRELL: I will ask just one question so it is clear.

Q Is this a financing proposal for the project that Mr. Shea sent to you at about the date it bears?

A This is dated December 13th --

THE COURT: Oh, come on.

A Yes.

THE COURT: Offer it in evidence. I'm not going to waste time over matters which are not disputed.

MR. FARRELL: 76 offered.

THE COURT: Received.

(Exhibit P-76 was received in evidence.)

Q Now, turning your attention to the same period, Mr. Shippee, did you meet at any time with representatives of Phillips Petroleum?

A Yes.

Q And when about was that? I'm not talking about Mr. Anderson, I'm talking about other than Mr. Anderson.

A Mid-December 1962.

MR. MacCRATE: I object to counsel's --

THE COURT: I will instruct the jury to disregard it. Questions aren't evidence and anything lawyers say is not evidence, unless they are stipulating to something or admitting that something is valid or correct.

All right, let's reframe the question. With whom did he meet?

Q With whom did you meet, Mr. Shippee?

A Mr. Fischbeck, Mr. Conn, there were others, Mr. Page, Mr. Smith, subsequently others, Mr. Waldby, Mr. Holland.

Q And where did you meet with them?

A Generally, in their office in Wall Street, New

York City.

MR. MacCRATE: Can we fix the place and time? The time because I think this is very open-ended, in view of some of the names that have been mentioned.

THE COURT: Let's take the first meeting, time and place, and who was present, who said what to whom.

Q When was the first meeting, Mr. Shippee, if you remember, the best of your recollection.

A At the end of 1962, in New York City, with Mr. Fischbeck.

Q And do you know Mr. Fischbeck's position or what he represented himself to be at that time?

A Yes.

Q What was that?

A He was the manager for the development of products and refinery.

Q Did you discussthe proposed project in Puerto Rico with Mr. Fischbeck?

A Yes.

Q And did you describe to Mr. Fischbeck the work that you and your associates had done up to that time?

A I described to Mr. Fischbeck the work that we had done up to that time, and he told me that he was

familiar with the project from a previous look at it, and he told me that the headquarters in Bartlesville had instructed him to work with us and he was available to us.

Q Do you know how long -- try to limit yourself to the first meeting, if you can -- how long that meeting took?

A It was probably half of a day.

Q And do you know who else was there besides you and Mr. Fischbeck?

A I was alone with Mr. Fischbeck on the first meeting.

Q Did you have a subsequent meeting with Mr. Fischbeck?

A Yes.

Q Do you know when that was?

A As I recall, it was the next day with Mr. Young.

Q That is Mr. Young and you were both with Mr. Fischbeck?

A Yes.

Q Did you discuss the petrochemical complex, the proposed petrochemical complex at that meeting?

A Yes, that was more of a technical discussion, principally between Mr. Young and Mr. Fischbeck.

Q How long did that meeting take?

A I left that meeting shortly after it started, after I introduced them and went to another meeting, and they remained behind. I don't know how long.

Q Did the other meeting you had have anything to do with the petrochemical complex?

A I don't recall.

Q During this period again, we're talking about late December '62 and early January, did you have discussions, further discussions with Mr. Diaz of EDA concerning the project?

A Yes.

Q What did Mr. Diaz say to you, if you remember?

A Mr. Diaz --

MR. MacCRATE: Your Honor, I'm going to object to anything about this meeting until I know something more about the time and place, and who was present.

THE COURT: Yes, as to any meeting, time and place and who was present.

Q Do you remember when this meeting was -- this would be subsequent to your return in his office in New York. Or, did you have telephone conversations with him?

A We had both. I'm trying to recall the meeting, and I would say it was about the middle of December

and it may have been on the 13th of December; we had a meeting in which we reviewed the new concept which has been described.

Mr. Diaz requested that we have an independent management consulting firm renew the new concept because of the novelty and we gave them three names. They chose A. D. Little & Co., with the directions to go over our project as we had presented it in Puerto Rico, and report independently back to EDA.

MR. MacCRATE: Your Honor, I'm going to object and ask that the answer be stricken. It has no connection with the defendant.

THE COURT: Well, if he took the project to A. D. Little & Co., I will permit him to so testify, but not as to any conversations concerning it with Little or Diaz Hernandez.

MR. FARRELL: Your Honor --

THE COURT: You see it would be hearsay, but I will permit the portion of the answer to stand, if he retained Arthur D. Little & Company, he may so testify. And if he did it.

MR. FARRELL: It is more than that. I want to ask him what the new concept is that he's talking about.

THE COURT: Didn't Arthur D. Little make a

report?

MR. FARRELL: No, they did not as it turned out eventually.

THE COURT: Well, unless it can be connected with Phillips, I can't take it.

MR. FARRELL: Your Honor, I have explained, I think, quite clearly, how I am going to do that.

THE COURT: All right, I will take it subject to connection.

MR. FARRELL: Thank you, your Honor.

Q What was the new concept that you described to Mr. Diaz?

A The new concept was that we should stop our focus on getting a firm commitment from a chemical company and return to the original focus of the core plant followed by satellites, and then change the concept of the core so that it would be conceptible and workable to the Oil Import Board and in the degree of change or modification, the core plant should be very flexible so it starts out as an existing refinery and is able to change over to a petro-chemical refinery once it is established and we can attract the chemical companies to come to Puerto Rico, but not to rely upon the good intentions of anybody. We should require that it have the character of a quasi-public utility, and

that it be part of the agreement with the Oil Import Board and part of the agreement with the corporation that it has to supply a feedstock, if a chemical company comes to Puerto Rico and requires it, that the chemical companies establishing themselves in Puerto Rico would have the right of first refusal on anything that the refinery could make, even if the refinery had to make it and suffer a loss, and that the EDA would undertake to make good their loss because it was the purpose of the refinery to form the basis of a chemical industry.

THE COURT: This is all what the witness told Mr. Diaz Hernandez?

MR. FARRELL: Yes.

A That is my concept that I described.

R. FARRELL: No, your Honor, that is what you described to Mr. Diaz?

A Yes. That was our new concept, principally my thought and idea. It appealed to them, but they wanted an independent consulting firm to hear it and to probe it and to report back independently to them of us what they thought of it.

Q Mr. Shippee, thereafter did you have meetings with Arthur D. Little?

A Yes.

Q And can you tell me where they took place?

A In the New York office of Arthur D. Little.

Q And can you tell me who was present?

THE COURT: Do we need all this? Can't he be asked did he retain the company?

MR. FARRELL: No, he can't, your Honor, because I am laying a foundation for some documents I am going to put in.

THE COURT: All right.

A A New York representative of EDA, Mr. Ivan Irizarry was present. I was present with Mr. Young. Mr. Blinken of E. M. Warburg was present, and there was a Mr. Norton and a Mr. Jensen of A. D. Little. We met in Mr. Jensen's office.

Q Now, I show you a document which has been --

MR. FARRELL: The date, your Honor, is January 8, 1963 and the exhibit number is Plaintiff's Exhibit 85. The old number is 432-DH, it is Defendant's.

Q I ask you whether you received that letter from Arthur D. Little at about the time we are speaking?

A Yes.

MR. FARRELL: Your Honor, I offer this letter.

MR. MacCRATE: Objection, hearsay, your Honor.

MR. FARRELL: That is not offered for a hearsay purpose.

THE COURT: I will reserve on this and rule at the next recess so we don't delay the trial.

Q During this period, Mr. Shippee, were you reporting to Mr. Anderson as to what you were doing?

A Yes.

Q I show you a letter dated December 31, 1962, Plaintiff's Exhibit 83, prior number D-25.

Is this a letter you wrote to Mr. Anderson on or about December 31, 1962?

A Yes.

MR. FARRELL: I offer the letter.

MR. MacCRATE: Objection, your Honor.

THE COURT: Hand it to the Clerk, please.

I will reserve on this also. Before we break for lunch I will rule on it.

Q Turning your attention to -- we are in January 1963, Mr. Shippee. As January progressed did you have other conversations or meetings with people at Phillips?

A Yes.

Q Can you tell me about the next one that you remember? That is the earliest one in January after any meeting you described before.

A We met in the Phillips office in New York by mid-January with Mr. Conn and Mr. Smith and Mr. Page.

THE COURT: Who is the we? Who was there from your side?

THE WITNESS: Mr. Young besides myself.

Q And how long did that meeting take?

A That meeting took most of the day.

Q At the meeting did you discuss the proposed petrochemical project?

MR. MacCRATE: I object to it, your Honor. He can ask the witness what was discussed.

THE COURT: I assume they weren't discussing the weather. I will let him give the substance of the conversation.

Q Go ahead.

THE COURT: What he said and what they said.

A We discussed the new concept and its impact on the application that was being prepared for submission.

THE COURT: What did you say and Mr. Conn and Mr. Young say? Give us the substance of the relevant conversation on that day?

A On that day Mr. Conn was trying to get information --

THE COURT: Mr. Shippee, I can't take it that way. Will you please give us the substance of the conversation relating to the matters in issue in this case; what they said and what you said.

A We requested samples of the type of crude oil that could be supplied from Phillips Venezuelan supplies.

We requested information on products that could be marketed.

We requested up to date information on the economics of one type of product to another and all of the technical aspects that go into the preparation of an outline for a refinery.

Q Mr. Shippee, did you on or about January of 1963 have a telephone conversation with anyone from Phillips?

A Yes.

Q Who was that?

A That would have been Mr. Fischbeck.

Q Did you have a telephone conversation with Mr. Page?

A Yes.

Q On or about January 18 Mr. Shippee, if you remember?

A Yes.

Q It was the middle of January?

A It was approximately the middle of January.

MR. FARRELL: I offer Plaintiff's Exhibit 87 which is a memorandum dated January 18, 1963, the prior number is 154.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 87 was received in evidence.)

MR. FARRELL: I will read this memo to the jury.

THE COURT: All right.

(Memo read.)

MR. MacCRATE: May I add what was read to the jury?

THE COURT: If the entire exhibit was not read, yes.

MR. MacCRATE: In the upper left-hand corner

appears the notation "File: Puerto Rico crude."

MR. FARRELL: And next to that is the hand-written note which says "Petrochem."

THE COURT: All right.

Q Mr. Shippee, at or about this time did you prepare, you or your associates, prepare a brochure containing your concept?

A Yes.

Q Mr. Shippee, I show you Plaintiff's Exhibit 214 which had previously been marked 32 --

MR. FARRELL: That is in the last section of the plaintiff's exhibits under the brochure section.

THE COURT: What is the former number?

MR. FARRELL: D-32.

THE COURT: It is now what?

MR. FARRELL: 214, P-214.

THE COURT: Fine.

Q I ask if this is one of the brochures that you and your associates prepared?

A Yes.

Q Did you deliver that brochure or another copy of that brochure to Phillips?

A Yes.

Q About when did you do that?

A About February 1963.

MR. FARRELL: I offer this.

THE COURT: To whom in Phillips do you claim it was delivered?

THE WITNESS: Mr. Holland as I recall.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, on the first page there is handwriting. Whose handwriting is that?

A I believe it is my handwriting.

THE COURT: Excuse me just a minute. Let's have some ground rules, if there is handwriting on the exhibit let's get it deemed excluded if it wasn't on the copy.

MR. FARRELL: No, your Honor. The handwriting in some of this is very important.

THE COURT: All right.

Then Mr. MacCrate may continue to voir dire.

BY MR. MacCRATE:

Q Was the handwriting that appears on the first page on this document when you say that you gave it to Mr. Holland?

A I believe it was.

Q And you asked Mr. Holland to do what with the

document?

A To reproduce ten copies of the attached, please.

Q Mr. Holland was to reproduce some copies of pieces of paper for you, is that what you are telling us?

A Of this application for import quota.

Q You wanted ten copies with your handwriting showing and in this form?

A No.

Q Mr. Shippee, the second page is a note. Is that also in your handwriting?

A Yes.

Q Is the note addressed to Mr. Richard Holland?

A Yes, it is.

Q You are asking him to reproduce ten copies of the attached, please. What was attached to that note at the time that you delivered that note, if you did, to Mr. Holland?

A This book.

Q Were all of the pages in this book in just the form that they are now in when you delivered them to Mr. Holland?

A As far as I know it is exactly as it was delivered to him.

Q I call your attention to the contents where there

is a handwritten appendix, A, B, C and where the name N.M. Shippe, 1362 has been crossed out.

Was this on the copy delivered to Mr. Holland for reproduction?

A I believe it was.

THE COURT: Can the jury see the witness. Please move over. I mean the attorneys, not you, Mr. Shippee.

Q On the fifth page of the report in brief there is handwriting. Whose is tht?

A I believe it is my handwriting.

Q Was this on the document when you delivered a copy to Mr. Holland?

A I believe it was.

Q Is this very copy the one you gave to Mr. Holland?

A I believe it is.

Q In Chapter 1 on the back of the third page there is handwriting in pencil. Whose handwriting is that?

A It is a combination of pencil and pen. I believe it is Mr. Young's pencil and I wrote over some of the words in pen to make it more legible.

Q Was this on the document you gave to Mr. Holland?

A I believe it was.

Q Opposite that page is a partial page which bears the notation "Insert A". Was this also included in what you gave to Mr. Holland?

A This is Insert A and it goes here.

THE COURT: That type of testimony is of no assistance to the Court. If something is going to be referred to as "this" then it must now be marked as 214-A or B so that the Court will know what the witness was referring to when the record is transcribed. If it is important the article referred to as "this" will be so marked.

Either of you gentlemen want it marked?

MR. FARRELL: Do you want it marked, Mr. MacCrate?

MR. MacCRATE: I ask that the handwritten page be marked. The one the witness referred to as this.

(Plaintiff's Exhibit 214-A was marked for identification.)

Q With respect to the page headed "References to Natural Resources of Puerto Rico", is that in the form that the document was given to Mr. Holland?

A I believe it was.

Q Chapter 3, the last two lines have been stricken in pencil, and there appears to be a notation in the lower right-hand corner. Were those notations on the document

as given to Mr. Holland?

A I believe they were.

Q I ask you the same question with respect to the handwriting on the bottom of the second page under the heading "Commercial Implementation".

A I believe that is correct.

Q Fastened on the following page is a yellow sheet headed "Insert B" and a pencil notation on that page indicating an insert.

Was that also a part of what was given to Mr. Holland?

A I believe it was.

Q I show you a page headed "Officers and Directors, Puerto Rico Oil & Petrochemical Company" and call your attention to the handwritin on that page opposite the name of Mr. A. Dale Fischbeck.

Was that handwriting on the document when you gave it to Mr. Holland?

A I don't believe it was. I recall Mr. Fischbeck made those corrections himself.

Q Did Mr. Fischbeck make those corrections in your presence?

A No, he told me did.

Q When did you first see the corrections?

A This book was returned to us after the new books were made from it and it would have been some time thereafter I saw it.

Q When was this book returned to you, Mr. Shippee?

A Prior to June -- at the time the books were sent to Secretary Chapman in Washington, we would have received them back just the day before. So I could identify the date they were sent to Washington, it would have been that ime.

Q So in late May of 1963 it is your testimony that this book came into your hands for the first time after you had given it to Mr. Holland, is that your testimony?

A That is as I recall.

Q When did you give this book to Mr. Holland?

A In February or March of 1963.

Q Can you fix the time and place any more precisely than that?

A Perhaps I can. There was reference to it and there may be an exhibit to refresh my recollection.

Q But what you can recall at this moment is that it was some time in February or March 1963 that you delivered this book, Plaintiff's Exhibit 214, to Mr. Holland?

A For reproduction. We have discussed other

of these books at various times and that is the reason I would like to be refreshed as to this particular book.

Q Of all the pages we have leafed through up to this time, the only change that was made in what was given to Mr. Holland from what you see here today is this notation under officers and directors? Up to this point as you and I have been leafing through the book together.

A Yes.

Q What about the change on the next page opposite vice-president finance, was that change on the book when you gave it to Mr. Holland?

A I believe it was.

Q Under "Engineering Planning" on the page following the map there is handwriting or notations. Did you make those notations in the book?

A Mr. Young made those notations.

Q Were they on the book when you say it was delivered to Mr. Holland?

A I believe they were.

Q I notice under a tab "Appendix A" there is nothing in the book.

Was there something in the book at that point when you delivered it to Mr. Holland?

A There were additional books accompanying this

book.

Q There were additional books that went with this as Appendix A which are not part of this exhibit?

A There were additional books that went with this book to Mr. Holland.

Q Can you tell us what those additional books were?

A May I look at Exhibits A and B? The table of contents, Exhibits A, B, and C are listed. Exhibit B is the processing and economic data for proposed Puerto Rican refinery.

(Continued on next page.)

Q Is there a date on that, Mr. Shippee?

A Not readily apparent.

Q Do you know by whom it was prepared?

A It was prepared by Mr. Young.

Q It is your testimony that that exhibit was prepared by Mr. Young?

A He was responsible for this. He drew upon various sources.

THE COURT: Is it clear what is meant by that exhibit?

THE WITNESS: Appendix B.

THE COURT: Appendix B for P-214 for identification.

A It is my recollection that Appendix A was a report of site locations, although I can't be sure.

Q Turning to Appendix B, there is a page headed "Processing and Economic Data for Proposed Petroleum Refinery, Introduction," and it is your testimony that Mr. Young was responsible for the preparation of that page?

A The whole section was under the responsibility of Mr. Young.

Q Well, did Mr. Young have anything to do with pages 2, 3, 4, 5, 6, 7 and 8?

A Yes, he selected them.

Q He selected them. But by whom were those pages originally prepared?

A You might ask Mr. Young.

Q Mr. Young didn't tell you by whom it was prepared?

A No.

Q He never told you that UOP was the source of the data that is here?

A He had a UOP report. I don't know if these pages came from that report. Mr. Young was responsible for these appendices and he could tell you directly.

Q Now, are all of these pages that follow at that point, one page headed "Processing and Economic Data for Proposed Puerto Rico Refinery, Basic Conditions," another, "Process Description and Yields," followed by pages, and "Processing and Economic Data for a Proposed Petroleum Refinery Addendum, ISOMAX case, and then "Processing and Economic Data for a Proposed Puerto Rico Refinery," list of tables and drawings, with a list of some twenty-three tables and drawings, is all of that a part of what you have referred to as Appendix B?

MR. FARRELL: Your Honor, I object to that. This is no longer voir dire. This is cross examination. This was -- it is his testimony that that was given to

Phillips.

THE COURT: I will permit him to answer this particular question and then I will call an end to the voir dire.

THE WITNESS: Please repeat the question.

THE COURT: All right, the reporter will read it back.

(Question read.)

A I'm uncertain, because I referred to Appendix A, B and C, and I don't see a divider sheet for Appendix C. I'm just uncertain.

THE COURT: What was delivered to Mr. Holland as far as Exhibit P-214 for identification is concerned?

THE WITNESS: This book was delivered to Mr. Holland.

THE COURT: And did the book contain all of the pencil and pen and ink notations in it that your attention has been directed to during the voir dire examination?

THE WITNESS: Except for the one exception of Mr. Fischbeck's description of his position.

THE COURT: All right.

Q Do you find in Appendix C -- an Appendix C in the volume?

A No, I don't.

Q Was an Appendix C delivered to Mr. Holland?

A I'm sure it was.

Q But it is not in this document before you at this time, nor is Appendix A, is it?

A I don't see it.

Q There is at the back of the book a handwritten notation. Whose handwriting is that?

A I'm uncertain. I don't recognize it as my own.

Q Was that given to Mr. Holland?

A I cannot tell you.

MR. MacCRATE: I would ask that it be marked for identification.

(Exhibit P-214B, marked for identification.)

MR. MacCRATE: I ask that the memorandum that Mr. Shippee has previously identified with Mr. Richard Holland's name on it be marked as the next exhibit number for identification.

(Exhibit P-214C marked for identification.)

MR. MacCRATE: I object, your Honor, to the admission of this as an incomplete document which does not

purport to be the same as what was delivered to Mr. Holland.

THE COURT: Well, as to the papers which has been marked 214B for identification, I think it is clear there is no proper foundation.

As to the balance of the document, 214 and 214A, which is a part thereof, and 214C, which is attached thereto apparently by paper clip, I would overrule the objection.

However, I will direct the plaintiff to make available to Mr. MacCrate, and to mark for identification, if it is within its possession, or the possession of counsel, anything else which was delivered to Mr. Holland contemporaneously with these papers or this particular exhibit.

MR. FARRELL: Your Honor, we have made available anything that we had in that connection.

THE COURT: All right. During the recess anything that you contend was delivered simultaneously shall be properly identified as an exhibit for identification.

All right, let's go forward.

(Exhibits P-214, P-214A and P-214C were received in evidence.)

BY MR. FARRELL:

Q Mr. Shippee, at the time of the preparation

of the exhibit that has just been introduced, 214, did you discuss it with Mr. Fischbeck?

A Yes.

Q Did you discuss with Mr. Fischbeck a proposal that he become an officer of the corporation that was to operate the petrochemical facility?

A Yes.

Q And what did he say to that?

THE COURT: Do we have the time and place and who was present?

Q Give us the time and place, Mr. Shippee.

A In late January or early February, and I believe the first meeting that I had with Mr. Fischbeck, I described the significance of the application and the new concepts and the importance of convincing the oil administration that this would not be just another refinery.

The board of directors --

MR. MacCRATE: Just a minute. We are fixing the time and place, your Honor.

THE COURT: I think we are supposed to be doing that.

Just the time and place and who was present when you discussed with Mr. Fischbeck the question of Mr. Fischbeck becoming a director.

A Myself and Mr. Fischbeck.

THE COURT: And where and when?

THE WITNESS: In New York City, approximately the end of January.

MR. MacCRATE: This was your first meeting with Mr. Fischbeck?

Q What did you say to him and what did he say to you at that time?

THE COURT: Is that a statement for the record that it was the first meeting?

MR. MacCRATE: No, I was trying to clarify the record, your Honor, and --

THE COURT: You will have an opportunity to cross examine later.

A I asked Mr. Fischbeck if he would be an officer of the company in order that we could show his position in the application to the Import Quota Board, and he agreed, and we included in all of our draft preparations Mr. Fischbeck as the vice president of operations.

Q Mr. Shippee, I am going to ask you to look at a document marked Plaintiff's Exhibit 93, which is dated 3/63, just March, '63. The old number was D43-G, and ask if that refreshes your recollection as to when you talked this over with Mr. Fischbeck.

A We talked this over --

THE COURT: Just yes or no, does the document refresh your recollection?

THE WITNESS: Yes, it does.

Q Can you tell me when you talked to Mr. Fischbeck concerning his becoming an officer of the petrochemical corporation?

A I believe towards the end of January, 1963.

Q And can you tell me at that time what he said to you?

A He said --

Q You told me what you said to him, have you not?

A Yes.

Q What did he say to you?

A He agreed and he wanted to confirm this by checking with the headquarters in Bartlesville. Subsequently he confirmed it.

Q Do you know when that was about?

A About a month later, perhaps the end of February or March, early March.

Q Did you show Mr. Fischbeck at any time Exhibit 214 or another copy of 214?

A Yes.

Q And did you show Mr. Fischbeck the description that this Exhibit 214 contained?

A Yes.

Q And did he make any remarks about it, that is, the description of Mr. Fischbeck?

A no.

MR. MacCRATE: Can we fix the time?

THE COURT: Yes, fix the time and place.

Q When was that?

A That would have been in the -- I believe in March, in the March meeting, in their office, when we discussed the marketing plan.

Q And what did he say in connection with the description?

A He had received approval and we were permitted to announce it as a public matter.

Q Did he make any changes in the description that this exhibit contained of Mr. Fischbeck?

A Yes, he did.

Q Did Mr. Fischbeck discuss with you other items contained in Exhibit 214 during those meetings?

A In my presence he discussed the other items with Mr. Young of a technical nature, and particularly on the marketing and the economic or the present day costs of

the various items.

Q Did Mr. Fischbeck at the meeting have a copy of Exhibit 214?

A Yes.

Q Did he review that copy with Mr. Young or with you?

A In my presence, yes.

Q And did he make criticisms or suggestions with respect to 214?

A Yes, he did.

Q Now, Mr. Shippee, you said that you asked Mr. Fischbeck if he would be willing or Phillips would be willing for him to be a vice president. At that time, Mr. Shippee, were you the sponsor of the project, the petrochemical project?

A Yes.

Q What did you conceive of your role as being at that time?

A I personally was the chairman of the board.

Q And as Prudential's role at that time?

A Prudential Oil Corporation was the sponsor of the project.

Q And Mr. Shippee, what did that mean?

A It meant that we would carry the whole project

through the Import Quota application and thereafter join with others in getting the necessary construction money and the plant into operation.

Q During this period in late '62 and early '63, were you reporting to the other members of the group as to your activities on this project?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained as to form. Strike out the answer. Other members of the group is too vague.

Q Were you reporting to Mr. Young, Mr. Warburg, or other employees of Prudential?

A Yes.

Q I show you a document which is marked Plaintiff's Exhibit 80, and which is dated 12/28/62, and it is previously numerized 8 and P-543. It has two numbers, and I ask if this is such a report?

A Yes.

Q And did you prepare that in the ordinary course of your work on this project?

A I did.

MR. FARRELL: Your Honor, I offer this.

MR. MacCRATE: Your Honor, objection.

THE COURT: I will reserve. Hand it to the

clerk, please.

Q Mr. Shippee, in the course of your work on the petrochemical project, did you prepare a proposed paragraph for a charter to be included in the corporation which would operate the facility?

A Yes.

Q And who worked with you in preparing this proposed paragraph?

A Mr. Coan.

Q Who else, if anyone?

A Mr. Young.

Q I show you Plaintiff's Exhibit 81, which is dated 12/28/62 and the number is D-432DC, and ask if that is a copy of the proposed charter paragraph that you prepared?

A It is.

MR. FARRELL: Your Honor, I offer that.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, there is again handwriting on this document on the lefthand side. Do you know whose handwriting that is?

THE COURT: Is the handwriting included in the offer, Mr. Farrell?

MR. FARRELL: Yes, I think it is. Yes, your Honor, it is.

THE COURT: All right.

THE WITNESS: Are the initials J.D.H.? I believe that would be Mr. Diaz Hernandez.

Q Do you know the handwriting of Mr. Diaz Hernandez?

A No, I do not.

Q Was that handwriting on the document that you prepared at the time that you prepared it?

A No, it was not.

Q And you're not able to tell us whether or not that is Mr. Diaz Hernandez' writing?

A No.

MR. MacCRATE: I would object to the admission of the document with the handwriting, your Honor.

MR. FARRELL: Your Honor --

BY MR. FARRELL:

Q Did you deliver a copy of this to Mr. Diaz Hernandez?

A Yes.

MR. FARRELL: Your Honor, I offer the document.

THE COURT: I reserve on that and hear

argument.

Q Where and when did you deliver that?

A I would have delivered that to Mr. Diaz.

Q When did you do it?

A In New York; probably in February, 1963.

MR. FARRELL: Your Honor, I offer it.

THE COURT: I will hear argument on these matters in just a few minutes.

MR. FARRELL: Your Honor, I would like to have the exhibit entered without the handwriting, at least, at this point, because I'd like to read it to the jury.

THE COURT: Is there an objection to Exhibit 81 for identification with the handwriting eliminated?

MR. MacCRATE: No.

THE COURT: All right, Exhibit 81 will be received at present without the handwriting, and the Court will reserve decision as to whether the handwriting can be admitted in evidence or not.

(Exhibit P-81 was received in evidence as redacted.)

(Mr. Farrell read to the jury from Exhibit P-81 in evidence.)

THE COURT: At this time I will excuse the jury for luncheon recess. Will you please return at 2:15.

(Jury left the courtroom.)

THE COURT: I think, gentlemen, discussion of Exhibit 81 for identification would be facilitated if someone would read the handwriting, because the Court is unable to puzzle out exactly what it says.

MR. FARRELL: May I see it, your Honor? Maybe I can do that.

MR. MARKS: It says, "Ivan, see me. Which charter is being submitted? We have seen" --

MR. FARRELL: "about."

MR. MARKS: --"about six combinations," I think. I can't quite make out the number, there is a number there.

THE WITNESS: Ivan Irizarry was the New York EDA representative reporting to Mr. Diaz Hernandez.

MR. MARKS: Mr. Diaz will be a witness so he can identify his own handwriting.

THE COURT: If he will be a witness, there is no need to go into that at this time.

I will hear you with respect to 83, 85, and 80 for identification.

MR. FARRELL: Could I see them, your Honor?

THE COURT: Off the record.

(Discussion off the record.)

MR. FARRELL: Your Honor, do you want to hear me or Mr. MacCrate? I have offered the exhibits.

THE COURT: All right. What is the objection, Mr. MacCrate?

MR. MacCRATE: Your Honor, with respect to P-83, which is a copy of a letter from Mr. Shippee to Mr. Anderson, dated December 31, 1962, and has attached to it a document headed "Policy Guidelines Per Core Plant," there are statements made in this letter that purport to summarize what has been done and what is going to be done and characterizes it in various ways, all by Mr. Shippee, and I respectfully submit that the document is complete hearsay, without any relation whatsoever to Anderson.

There is not one jot of evidence that relates Mr. Anderson's receipt of this document to Phillips.

THE COURT: I have been told throughout this trial, though there is no competent evidence before me to that effect, that they are prepared to show that Anderson, through these matters, was also acting as an agent for Phillips. Isn't that so?

MR. MacCRATE: Your Honor, acting as an agent for Phillips at this time and place with respect to receiving a document?

THE COURT: That's a question for the jury,

isn't it?

MR. MacCRATE: I believe it is a question for the Court, your Honor, because --

TEH COURT: The fact of Anderson's agency, if it be so, and the scope of his agency has not yet been shown to me. Perhaps you and Mr. Farrell are both well familiar with Anderson's place in this picture, but the Court is not. All I heard is what I have heard at pretrial conferences and at the opening statements of counsel here. If someone will tell me what Anderson's role or what the plaintiff's version of Anderson's role is, then I could rule with respect to Exhibit 83.

MR. MARKS: I think I can do that.

MR. FARRELL: We can do that.

MR. MARKS: Because Mr. Keeler testified in Bartlesville when I took his deposition that Mr. Anderson was on a retainer from Phillips to bring to their attention new projects and he so testified and we have offered the pages from his deposition as a proposed exhibit, so that there is no question that he was an agent of Phillips to bring to their attention new projects and he testified about that.

THE COURT: On December 31, 1962?

MR. MARKS: From 1961 forward he had it.

MR. MacCRATE: There is no testimony that establishes that he had any such relationship of bringing new projects as to Puerto Rico Phillips, and there is an express denial that he had any representation of Phillips with respect to Puerto Rico. He was on a legal retainer, your Honor. The fees, the retainer fee each year was paid to the law firm here in New York of Roberts & Holland, with which Mr. Anderson was associated.

THE COURT: It is probably premature to rule but if the evidence actually shows what Mr. Marks just stated to the Court I would be inclined to take it and let the jury ascertain whether this letter constituted any kind of notice to Phillips or not. If it really is so that during this period Anderson had an agency of that breadth I think it presents a jury question of fact whether this letter is notice to Phillips of the facts therein contained.

MR. MacCRATE: Regardless of whether the letter ever was sent to anyone within the Phillips organization.

THE COURT: You see Mr. Anderson may be within the Phillips organization. That is not clear to me yet.

MR. MacCRATE: There is no suggestion that he was anything other than a consultant and that he was retained as an attorney --

MR. MARKS: Here it is on page 366 of Mr. Keeler's testimony.

(Excerpt read from deposition.)

THE COURT: Is Mr. Anderson alive?

MR. FARRELL: Yes.

THE COURT: He is available to come forward and say he never received the letter or that he never imparted it to Phillips but on the present state of the record, until

rs2

that deposition material actually comes in before the jury, the only way I can receive 83 would be subject to connection and it is best not to do that if there is any dispute.

MR. FARRELL: Your Honor, rather than have a situation where the document would be introduced piecemeal, I would request that we read in this section Mr. Keeler's deposition before the jury and therefore lay the foundation for that document if that would be required.

Otherwise, I think the order of proof and the documents will be introduced at a time when they will have much less meaning and connection with Mr. Shippee's testimony.

THE COURT: I think you ought to focus on the exhibit itself. All that tells me is that the writer of the letter has informed Mr. Anderson as of that date of various activities in which he has been engaged and the original was on the Prudential letterhead but nobody told us that.

MR. FARRELL: Mr. Shippee said he wrote it in the ordinary course of work on the project. Yes, I assume that too.

THE COURT: So he told Mr. Anderson as of that date these are the things he has done and the things he is doing. That is really all it shows.

MR. FARRELL: I think that is something.

MR. MacCRATE: But Mr. Shippe testified that Mr. Anderson was a member of their group. He is giving a report to someone who was a member of a group.

THE COURT: He also had a very broad agency for Phillips according to Mr. Keeler's deposition.

MR. FARRELL: There are policy guide lines which have some of the ideas in there that we are complaining about Phillips stealing.

THE COURT: I will permit 83 to be received subject to connection. I will not have the testimony of this witness interrupted to read depositions.

I will instruct the jury that unless it be shown that notice to Anderson was notice to Phillips, then the letter gives no notice to the defendant. I will give a limiting instruction on that.

As I say, once the deposition is read in, I think it becomes a admissible and the defendant can rebut it by showing this is not the scope of Anderson's agency or that Anderson never communicated it and had an adverse interest because he was also a member of the Prudential group.

All right, what about No. 80?

MR. MacCRATE: May I see the original of that?

It is a report, your Honor, to Prudential Oil Corporation, E. M. Warburg Company and I assume it is the directors of Prudential Oil Corporation. There is no indication of any relation of anyone here to Phillips.

THE COURT: I think that is true.

What do you say about this one, Mr. Farrell?

MR. FARRELL: That was prepared in the ordinary course of work on the project. I think it shows they were continuing to work on the project and I think it shows the status of the project at that time. I don't think that this is hearsay. I think this is a proper business document.

THE COURT: It possibly can be offered to show the scope or value of the services or something like that but as far as offering it for the truth of the facts therein stated, I wouldn't be inclined to take it. The man is here and he can use it to refresh his recollection and I think you must be careful, taking a lot of cumulative papers which might be regarded as improperly received here.

This witness is here and he can tell you he wrote a report, how much time he put on it and where he went, who he saw and what he did. So I think for the moment I will sustain the objection to 80 but he may testify he made a report and how long he took doing it.

MR. FARRELL: Your Honor, I will question the witness.

THE COURT: All right. He may be questioned and if he has forgotten it it is in the report and he may use the report to refresh his recollection.

I believe also the same with respect to 85 for identification. I think the fact that he had dealings with Arthur D. Little is admissible to show the scope of the work he undertook or the value of the services. But as far as the statements therein contained, they seem to me to be of doubtful relevance in any event.

MR. FARRELL: He is reporting --

Your Honor, the second paragraph reviews once again the concept that Mr. Shippee at that time and his associates had conceived and were trying to put into effect.

This is evidence not only they met with Arthur D. Little but Arthur D. Little on precisely that concept and that concept was moving ahead and that it was being developed.

THE COURT: No one denied yet that he met with Arthur D. Little. If he is accused of a recent fabrication in cross-examination in connection with his testimony concerning Arthur D. Little, then Exhibit 85 will come in.

rs6

MR. FARRELL: That is not the point I am making. The point I am making is that at the meeting with Arthur D. Little we discussed the outline for the core feed stock, the public utilities.

THE COURT: He just told us that, didn't he, under oath?

MR. FARRELL: That is correct.

THE COURT: So this paper is at most cumulative. Nobody so far has questioned. If he is asked on cross-examination or it is intimated to this jury that he never consulted Arthur D. Little and he is lying when he says so, then you can bring in Exhibit 85 for identification.

But it is hearsay and it is merely cumulative at most. Nobody disputes it --

Do you dispute that he was meeting with Arthur D. Little?

MR. MacCRATE: No, your Honor.

THE COURT: He consulted them about this plan of his.

MR. McCRATE: Yes, your Honor. There is no dispute about that.

THE COURT: All right.

I am sustaining as Exhibit 85 for identification with leave to renew if cross-examination makes it appropriate.

MR. FARRELL: Very well, your Honor.

THE COURT: All right.

Recess until 2.15.

(Luncheon recess taken until 2.15 p.m.)

- -

AFTERNOON SESSION

(2.25 p.m.)

(Jury present.)

N A T H A N S H I P P E E , resumed.

THE COURT: At this time I am sustaining the objection to Exhibits P-80 and P-85.

As to Exhibit P-83, that is received subject to connection and I will now explain to the jury what I mean by that.

Exhibit P-83 is a letter addressed to Mr. Anderson. Unless it shall later appear in the course of the trial that at the time the letter was sent to Mr. Anderson, Mr. Anderson occupied a position as an agent of the defendant, Phillips Petroleum Company, and further that the scope of his agency or the nature of it was such that the subject matter of the letter came within that scope, unless those two facts appear to the satisfaction of the jury, the letter may not be considered at all and the Court may strike out the letter later on in the trial and if I strike it out, you can't consider it.

MR. FARRELL: Thank you, your Honor.

THE COURT: P-83 is received subject to connection.

(Plaintiff's Exhibit 83 for identification was received in evidence.)

THE COURT: You may continue the examination of Mr. Shippee.

MR. FARRELL: Thank you, your Honor.

I will now read Exhibit 83.

THE COURT: That is the one I told the jury I received subject to connection. It is entitled to no weight in this trial unless it appears to your satisfaction that it relates to the matters with respect to which Mr. Anderson had an agency for the defendant

(Plaintiff's Exhibit 83 in evidence was read to the jury.)

DIRECT EXAMINATION (Continued)

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to December 31, 1962, what was the status of the project?

MR. MacCRATE: Objection, your Honor.

THE COURT: To the form of the question?

MR. MacCRATE: Yes.

THE COURT: I will sustain the objection.

Q Mr. Shippee , turning your attention to December 31, 1962, what was the status of the proposed petrochemical facility on which you and Prudential were working in December 1962?

MR. MacCRATE: Same objection.

THE COURT: Same ruling. It is too broad a question. Ask him particular facts about it if they aren't already in the record.

Q Mr. Shippee, as of December 31 had you met with representatives of Phillips Petroleum?

A Yes.

Q Had you met with them in connection with their offer contained in Exhibit 69 to counsel you, to assist you in the design and construction of the proposed facility?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: It calls for a conclusion, I suppose. I will sustain the objection and strike out the answer.

Q Mr. Shippee, did you meet with them for the purpose of having them counseling and assisting you?

MR. MacCRATE: I object to the purpose for which he met with Phillips at an undisclosed time and an undisclosed place with undisclosed people.

THE COURT: He is talking about a meeting in New York prior to December 31, 1962 as I understand it.

MR. FARRELL: That is correct.

MR. MacCRATE: But this is not related to any

particular conversation and it is a statement of Mr. Shippee's intention, his state of mind.

THE COURT: His intention may be of some relevance on some theory of this case and I will take it solely to show what his intention was, whether he believed he was meeting in furtherance of Exhibit 69.

Q Go ahead, Mr. Shippee, you may answer the question.

A At the time --

THE COURT: Wait a minute, the question really ought to call for a yes or no answer, not a speech.

A Yes.

Q At the time that you made your trip to Puerto Rico in November of 1962, did you take with you this letter, that is, Exhibit 69, and show it to the representatives of the EDA that you met with?

A Yes.

Q Turning your attention still to the period at the end of December, 1962, what representatives of Phillips had you personally met with?

A Mr. Fischbeck.

Q What was his position?

A He was a middle management, a manager. His duties pertained to foreign assignments and to refinery

assignments and to new development.

Q Thereafter in January did you personally meet with Phillips' personnel?

A Yes.

Q Now, can you tell us again who you met with and their positions?

THE COURT: Didn't we have all that this morning?

MR. FARRELL: Your Honor, we had some names this morning. I am trying to get them all in the record at once.

THE COURT: I think we went through that. I don't think we have to have a repetition of the January 1963 meeting at Phillips' office.

(Continued on next page.)

2 p.m.

jklt 1 Shippee-direct

MR. FARRELL: Your Honor, I don't think --

THE COURT: If there is a name he left out, ask him if he met so and so.

MR. FARRELL: I just want the positions. I think I left that out. If he knows.

THE COURT: All right.

Q Can you give me the names and the positions they held, to the extent that you knew them?

A Yes. Mr. Waldby --

Q Do you know what Mr. Waldby's position was at that time? Waldby? We are talking about January --

MR. MACCRATE: Objection. This is leading the witness.

THE COURT: It may be leading the witness. I heard no testimony this morning about a meeting Mr. Waldby in January '63.

MR. MacCRATE: Mr. Waldby's name was included in the list.

THE COURT: It was? The jury's recollection will control over anything I say or anything the attorneys say.

Let's move along.

Q Can you tell me the names as you remember them and the positions they held?

THE COURT: Is there any argument about whether these people worked for Phillipss?

MR. FARRELL: Your Honor, I don't know. I want to establish for the record they do.

THE COURT: He met people and he's given us their names, and he said they worked for Phillips. Let's go on.

Q Mr. Shippee, prior to the recess, you told us that Mr. Fischbeck had agreed to become an officer of the petrochemical complex, the corporation operating it, did you not?

A Yes.

Q And did you notify the people with whom you were working, that is, the Warburg-Prudential people, Mr. Coan, Mr. Young, of that?

A Yes.

MR. MacCRATE: Much too general, your Honor.

THE COURT: You want them one at a time?

MR. FARRELL: I've listed them. I said Warburg-Prudential people, Coan and Young.

THE COURT: That is not good, Prudential people. Mr. Farrell, let's give people names. The jury will remember who they work for. Prudential people could mean one of --

Q Mr. Willey?

A Yes.

Q Mr. Little?

A Yes.

THE COURT: All right.

Q Is that the notification?

A Yes.

Q Did you prepare that in the course of your duties in working on this petrochemical complex?

A I did.

MR. FARRELL: I offer this.

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained as cumulative. The witness already testified that he notified them of this fact. It hasn't been disputed yet. If it is disputed on cross examination, then you can bring the exhibit in.

What is the number of it again?

MR. FARRELL: 93, your Honor.

THE COURT: All right, 93 for identification.

Q Now, Mr. Shippee, subsequent to January 1969, did you hold further conversations with A.D. Little & Co.?

A Yes.

Q Were they meetings or telephone conversations?

A They were both. There was telephone conversation and a meeting.

Q You testified with respect to the meeting before the recess, did you not?

A Yes.

Q Thereafter you had telephone conversations?

A Correct.

Q In or about March 1963 did you receive a letter from Arthur Little?

A Yes.

Q I show you Plaintiff's Exhibit 94. That is March 5, '63; previously marked D-28. Did you receive that letter from Arthur Little & Co. at or about that time?

A Yes.

MR. FARRELL: Your Honor, I offer this letter.

MR. MacCRATE: No objection, your Honor.

THE COURT: It will be received in evidence.

(Exhibit P-94 was received in evidence.)

MR. FARRELL: I will read this letter.

(Mr. Farrell read to the jury from Exhibit P-94 in evidence.)

Q During the months of March and April, Mr. Shippee, did you have further meetings with representatives of Phillips?

A I did.

Q Can you tell us who they were?

A The meetings were in the Phillips office in downtown New York, and Mr. Page, Mr. Smith, Mr. Fischbeck.

Q And those are all representative of Phillips that you mentioned?

A Yes.

Q Can you tell us about when these meetings took place?

A There was a meeting in February. There was a meeting in March, towards the end of March.

Q Tell me about the one in February first. Who was there?

A Mr. Fischbeck, Mr. Smith, Mr. Page. I believe Mr. Conn at that meeting or an earlier meeting.

Q. Anyone else?

A Mr. Young and myself.

Q Can you tell us the substance of the discussions, if you can remember tell us who said what -- where was that meeting, Phillips office?

A At Phillips' office, in New York, yes.

Q Tell us the substance now.

A I requested additional information on a technical basis for the application which Mr. Chapman was prepareing in Washington, and Mr. Young and Mr. Fischbeck then discussed that in my presence. I requested help on

marketing information and Mr. Fischbeck volunteered that they would develop the marketing information and relate it to current day prices and bring it up to date.

Q Did you report this to Mr. Anderson?

A Yes.

Q Do you know if you reported it orally or in writing?

A Orally, generally. We usually rode from New York to Connecticut in his car at night.

Q I show you a copy of a letter marked Plaintiff's Exhibit 95, and the date is March 8, 1963, prior number D-11, and I ask whether this is a copy of a letter that you wrote to Mr. Anderson on or about the date it bears?

A It is.

MR. FARRELL: Your Honor, I offer this.

MR. MacCRATE: Your Honor, the testimony has just been with respect to an oral conversation. There's been, I assume, no relation of this document to any oral conversation at this time.

THE COURT: Would you hand it to the clerk, please? If it is an essential document, I will take it subject to connection, depending on what the proof shows with respect to Anderson. If it is not necessary, I ask you not to burden me with it.

MR. FARRELL: It is essential, your Honor.

THE COURT: All right, it is received subject to connection.

(Exhibit P-95 was received in evidence.)

MR. FARRELL: I am going to read this, your Honor.

THE COURT: All right.

Members of the jury will recognize that this particular letter has been received subject to connection. You may later in the case be asked to disregard it. You may be directed to disregard it if I strike it out.

(Mr. Farrell read to the jury from Exhibit P-95 in evidence.)

Q Now, Mr. Shippee, at the meetings with Mr. Fischbeck that you attended, was there a discussion of the proposed feedstock for the petrochemical plant?

A Yes.

MR. MacCRATE: Could we take these one meeting at a time?

THE COURT: Yes.

Q Can you tell us whether this was discussed at the meeting in February that you just testified about?

A It was.

Q And will you tell us the content of that

discussion and who said what, if you remember.

A The questions had been raised by Mr. Chapman to me.

Q Tell me who said what.

A And I then laid out the questions that were needful for answers and principally it was relationship to convincing the Oil Board on the issuing of the quota. The amount of gasoline was a major question and the amount of petrochemical feedstock is a sister question to it. And technically it was difficult --

THE COURT: Won't you just please say what you said to Mr. Fischbeck and what he said to you in this February meeting?

A I told Mr. Fischbeck that we had to do something to have the specifications so flexible that while it might start out with petroleum products, it could be converted over to more than fifty percent of petrochemical products, and we had an extensive discussion, principally between Mr. Young and Mr. Fischbeck in this regard, and it got into two technical areas of which I was a listener but not a participant because it was outside my technical knowledge, but in the one area they discussed bringing in naphtha or light crude, and in another area they discussed exporting some of the products so that we could undertake

to the Import Board that a certain percentage of them would not be brought into the United States at all.

Q Now, the discussion of light petroleum or naphtha, was that as a feed stock for the project that would be used in the product as a raw material?

A Yes.

Q Did Mr. Fischbeck respond to this?

MR. MacCRATE: I object, your Honor. There is no indication that Mr. Fischbeck was not the one who originated it.

THE COURT: We haven't been told. We ought to get the substance of these conversations.

Who first mentioned the question of naphtha?

Q Who first mentioned naphtha to your best recollection?

A In the prior meeting?

THE COURT: At this meeting.

A Mr. Young.

Q What did Mr. Fischbeck say if anything?

MR. MacCRATE: What did Mr. Young say first.

THE COURT: All right, let's try to take it in an orderly fashion and get the substance and not speeches, please.

Q What did Mr. Young say?

A Mr. Young said that the problem could be approached from two directions. One, on the basis of

naphtha and the other on the basis of an assurance that a certain percentage of the product would not be brought into America in any case.

Q Did Mr. Young mention naphtha?

A Yes.

Q Did he suggest it as a feed stock?

A He suggested that as one of the courses of solution to the problem.

Q Did Mr. Fischbeck respond to this?

A He did.

Q What did he say?

A He agreed it was a -- in that connection with the suggestion that some part would not be brought into America at all that the question of the marketing plan caame up.

Q Wait a second, the naphtha, Mr. Shippee.

What did Mr. Fischbeck say with respect to that proposal.

MR. MacCRATE: Your Honor, again we are falling back onthe word agreed.

THE COURT: I have to instruct you, Mr. Shippee, that you may only testify as to the substance of conversations. You may not testify as to your opinion of what somebody agreed to. Whether somebody agreed or not is a question for the jury to decide based on the conversation

as related by you and as later related by anybody else who attended that meeting and who may testify.

Please pay attention to the questions. Try to answer them as they are asked. Frame another question, Mr. Farrell.

Q Mr. Shippee, what did Mr. Fischbeck respond to that proposal?

A Mr. Fischbeck agreed with me --

THE COURT: No, listen to me --

A Mr. Fischbeck said that the concept of naphtha could be included.

Q Did he say anything else?

A He said that the foreign department would look into the marketing of some of the product in South America.

Q Do you recall or can you tell us whether you had a subsequent meeting with Mr. Fischbeck, the next meeting after this one you just testified to?

A Yes.

Q Can you tell us where that was?

A That was in the offices of Phillips in lower Manhattan .

Q When was that?

A That was in March of 1963.

Q Can you tell us who was there?

A Mr. Young besides myself, Mr. Smith, Mr. Page, Mr. Fischbeck.

Q Can you tell us the subjects that were discussed? Tell us if you can who said what and the subjects of their discussion.

A I said that the application was nearing its final form and that we must have it ready for presentation before the end of May. I said that Mr. Chapman urged us to get the marketing plan in greater detail into the application as it now stood.

I also asked for help in bringing the economics up to date.

Mr. Fischbeck told me that they would bring the economics up to date, they would get a marketing plan pulled together to add into the application and that it would be ready for the end of May.

Q I show you an exhibit that has been marked as Plaintiff's Exhibit 98 for identification.

MR. FARRELL: The date, your Honor, is March 19, 1963 and the previous number is Plaintiff 166.

Q Is this a letter and an enclosure that you wrote to Mr. Fischbeck shortly before the meeting that you just described?

MR. Mac CRATE: I object to the form of that

question.

THE COURT: Is this a letter he wrote to Mr. Fischbeck? Everybody seems to admit it.

Any objection to the document?

A Yes, it is.

MR. FARRELL: I offer this document.

THE COURT: I assume, Mr. Farrell, if something is listed on page 74 of the pretrial order as a letter from Shippee to Fischbeck you have a right to assume that is what it is. Just tell your adversary I am offering Exhibit 98. If he wants a greater foundation you can question the witness.

MR. FARRELL: I was doing it more formally.

THE COURT: Don't do it formally when it consumes time.

Any objection to 98?

MR. MacCRATE: Your Honor, there is an objection. There is handwriting on the document.

THE COURT: All right, is the handwriting part of the offer?

MR. FARRELL: That was produced by Phillips. That is their handwriting.

THE COURT: The handwriting on my copy is illegible. I read page and a question mark but the rest

is illegible. I am prepared to exclude the handwriting.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, was the second page which is part of Exhibit 98 attached to your letter when it was sent by you?

A Yes, it was.

Q Whose handwriting is that?

A That is mine.

Q Was this prepared on or about the time of this letter, March 19, 1963?

A I believe it was.

MR. MacCRATE: I withdraw my objection, your Honor.

THE COURT: All right, 98 is received.

(Plaintiff's Exhibit 98 for identification was received in evidence.)

MR. FARRELL: I am going to read the letter, your Honor.

(Plaintitf's Exhibit 98 in evidence was read to the jury.)

MR. FARRELL: Mr. MacCrate, I plan to offer Plaintiff's Exhibit 100, a letter of Shippee to Chapm an date 3/29/63, previously P-198.

MR. McCRATE: Objection, your Honor, no connection to the defendant Philliips.

MR. FARRELL: A cc went to Mr. Anderson.

THE COURT: I will take it subject to connection depending on the evidence concerning Anderson and as to whether it can be ascertained whether a carbon copy went in fact to Mr. Anderson.

(Plaintiff's Exhibit 100 was received in evidence.)

BY MR. FARRELL:

Q Did you mail a carbon copy of this letter to Mr. Anderson, mail or deliver?

A Yes.

MR. FARRELL: I am going to read the letter, your Honor.

THE COURT: All right.

(Plaintiff's Exhibit 100 in evidence was read to the jury.)

MR. FARRELL: Mr. MacCrate, I intend to offer Plaintiff's Exhibit 99 which is a memo to Fischbeck dated March 28, 1963.

MR. MacCRATE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 99 for identification

was received in evidence.)

(Plaintiff's Exhibit 99 in evidence was read to the jury.)

Q Mr. Shippee, in the last discussion with Mr. Fischbeck was there a discussion concerning who or what corporation would apply for the import quota?

A At this time or a later time?

Q Well, I am calling your attention -- we are in March of 1963. This memorandum was March and your letter was March of 1963.

A Yes.

MR. MacCRATE: May we have a specific question, your Honor, and, please, if the witness will direct himself to the particular meeting about which he has been questioned.

THE COURT: Yes, I think it should be.

A March 27, approximately 1963.

Q At the time of the meeting in March that you just testified about with Mr. Fischbeck, was there a discussion concerning who should apply, what corporation should apply for the oil import quota?

A Yes.

Q Can you tell me the substance of that discussion?

Where was the meeting, at Phillips' office?

A Yes, it was Phillips, office, lower New York.
Q Who was there besides you and Mr. Fischbeck?
A Mr. Young, Mr. Page, Mr. Smith.

Q What discussion was there concerning the application for the import quota?

A I told the group -- I was addressing myself to Mr. Fischbeck -- that the import quota regulations required that the oil company with a history of importing oil must sign the application.

Q And did you say anything more?

A This would require identification by Phillips of where the crude was coming from. We needed a sample of it, and they should be prepared to execute the necessary documents on that basis.

Q Did the application have to be made in Phillips' name?

A For the import quota, yes.

THE COURT: Did you tell Mr. Fischbeck this?

THE WITNESS: I did.

Q What did Mr. Fischbeck say to that?

A It was accepted. He didn't --

Q Just tell me what he said.

THE COURT: Yes, I have to sustaine the objection and I will strike out the conclusion of the witness.

A Mr. Fischbeck said that he would get us the oil samples, and that he would look into the matters that we had requested.

Q Including the application?

A Including signing the application for the import of oil.

Q From whom had you received -- before this meeting, from whom had you received the information that someone at Phillips or someone like Phillips would be required to file the application?

MR. MacCRATE: Objection, your Honor.

THE COURT: I think the witness has already said that it was in the regulations of the Department of the Interior, has he not?

MR. FARRELL: He has. He didn't read them. I want to know who.

THE WITNESS: Secretary Chapman.

THE COURT: Well, don't volunteer until I can rule, Mr. Shippee.

MR. MacCRATE: Counsel is testifying.

THE COURT: I will permit him to say he got this information from somebody. He may answer.

MR. FARRELL: That's right.

Q Who advised --

A Secretary Chapman.

Q And did he talk directly to you on that subject.

A Directly to me. It was one of the items I had to take up.

Q And you spoke to Mr. Chapman on that subject?

A I did.

Q Now, after the meeting about which you have testified, did you receive any marketing information from Mr. Fischbeck?

A No.

MR. FARRELL: Mr. MacCrate, I would offer now Exhibit, Plaintiff's Exhibit 101, which is a letter of April 3, 1963, prior number P-170, Shippee to Fischbeck.

MR. MacCRATE: No objection, your Honor.

THE COURT: It will be received.

(Exhibit P-101 was received in evidence.)

Q Mr. Shippee, I want to ask you about Exhibit 101. In the bottom of the second paragraph it says:

"Attached is a copy of the letter."

Can you tell me whether that letter, or what letter that refers to?

A That letter refers to a letter I wrote to Mr. Chapman.

Q Is that the exhibit that has already been introduced as Exhibit 100?

A It is.

MR. FARRELL: Your Honor, I am going to offer at this time Plaintiff's 102 which is dated April 9, 1963, and it is prior number P-16.

MR. MacCRATE: No objection, your Honor.

THE COURT: Received in evidence.

(Exhibit P-102 was received in evidence.)

MR. FARRELL: I am going to read Exhibit 101.

THE COURT: Have we established -- oh, 101 you're going to read?

MR. FARRELL: That is the prior exhibit.

THE COURT: Go ahead.

(Mr. Farrell read to the jury from Exhibit P-101 in evidence.)

MR. FARRELL: Now I will read Exhibit 102.

(Mr. Farrell read to the jury from Exhibit P-102 in evidence.)

MR. FARRELL: Mr. MacCrate, I am going to offer Plaintiff's 103, dated April 10, 1963, which is previously P-17.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-103 was received in evidence.)

MR. FARRELL: This is a letter or a memorandum by Mr. Page of Phillips.

(Mr. Farrell read to the jury from Exhibit P-103 in evidence.)

Q Mr. Shippee, were you advised that Prudential was not interested in going further until you had received a quota?

THE COURT: I think you mean Phillips.

MR. FARRELL: I'm sorry.

Q Phillips.

A At the end of April, not at that time.

THE COURT: Can't you just answer -- all right, at the end of April he was advised.

Q Did you hear this from -- from whom did you hear it?

A From Mr. Fischbeck.

MR. FARRELL: Mr. MacCrate, I will offer Plaintiff's Exhibit 105, which is a letter, 4/11/63, P-201.

MR. MacCRATE: Objection. Hearsay. No connection with Phillips.

THE COURT: I will reserve on that until the recess and rule on its admissibility at that time.

MR. FARRELL: Thank you, your Honor.

Mr. MacCrate, I now offer Plaintiff's 106. The prior number is 471, 171 -- it's been marked

several times, and the date is 4/22/63.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-106 was received in evidence.)

MR. FARRELL: I am going to read that exhibit, your Honor.

On the top of the exhibit, attached to it, is a handwritten note from Larry to Dick.

(Mr. Farrell read to the jury from Exhibit P-106 in evidence.)

MR. MacCRATE: I believe Mr. Farrell, there is a date at the top, 4/22?

MR. FARRELL: I will accept your statement, Mr. MacCrate. I can't see it on my copy.

MR. MacCRATE: There are also the initials that -- that don't -- they do appear.

MR. FARRELL: They appear, but the date does not appear on my copy.

MR. MacCRATE: And I believe the initials are P.T.P.

MR.FARRELL: No, I think they are F.T.P. I will stand on that.

The attached letter from Mr. Shippee to Mr. Fischbeck, on the letterhead of Prudential Oil Corporation,

April 22, 1963.

(Mr. Farrell read to the jury from Exhibit P-106 in evidence to the jury.)

MR. FARRELL: May I see the exhibit on which you are reserving decision, your Honor?

THE COURT: 105?

MR. FARRELL: Yes, sir.

THE COURT: I think at this time I will excuse the jury for a recess. The jurors may withdraw to the jury room and have a ten-minute recess.

As soon as the jury leaves, I will talk with you about that.

(Jury left the courtroom.)

THE COURT: What is the basis for the admissibility of Exhibit 105?

MR. FARRELL: Your Honor, I have two.

First, this letter was -- I will elicit testimony but 105 -- that is the one you have, your Honor, is the letter referred to in 106, which went to Mr. Fischbein.

MR. MacCRATE: How do we know that it did?

MR. FARRELL: He's going to testify.

THE COURT: Let me have 106, please.

MR. FARRELL: Secondly --

THE COURT: Wait just a moment now. Don't

lose me on this.

MR. FARRELL: Okay.

THE COURT: Well, if he can testify to that, that would probably give it an adequate foundation to obviate the hearsay objection, would it not?

MR. MacCRATE: I don't believe, your Honor -- this letter, 105 is from Mr. Chapman's secretary to Mr. Shippee, and she purports to report in that letter upon how Mr. Chapman feels about something. Now, that is the rankest sort of hearsay.

THE COURT: Well if it is offered for the truth thereof I would of course agree. However --

MR. FARRELL: This is offered to show that Prudential and Mr. Shippee and he thought Phillips were continuing to work on the project. And that Fischbeck got that letter.

THE COURT: You see, the second page of Exhibit 106 is certainly admissible. Now, if it can be shown by competent testimony that the papers which has been marked Exhibit 105 for identification was enclosed or a copy of it was enclosed with the second page 106 and sent to Mr. Fischbeck, I would take 105 as amplifying and making more complete and understandable the second page of Exhibit 106, and I would give Mr. Farrell an opportunity to elicit

BEST COPY AVAILABLE

that fact if it can be elicited from this witness, if he knows what he enclosed with his April 22, 1963 letter to Mr. Fischbeck, which is page 2 of 106.

MR. MacCRATE: The difficulty, as I see it, your Honor, is that there is a double hearsay aspect in that the secretary is reporting upon something, and it does seem to me that it's being offered for the truth of the matter that she asserts there from what Mr. Farrell advises.

THE COURT: I don't think it is. I think it is offered to show that as of April 22, 1963, Mr. Shippee believed that Mr. Fischbeck was engaged in the process of completing a report. And there is some contrary evidence to the effect that Mr. Fischbeck and Phillips had decided they weren't going to complete any report at all. They were just going to wait to see if Prudential could get its own quota.

If that is true, that may be relevant to the case.

All right, we will be in recess for about five minutes.

MR. FARRELL: Thank you, your Honor.

(Recess.)

BEST COPY AVAILABLE

Q Mr. Shippee, I show you Plaintiff's Exhibit 105 and ask if that is a copy of the letter which you sent to Mr. Fischbeck with your letter of April 22, that is the second page of Exhibit 106?

A It is.

MR. FARRELL: I renew my offer.

MR. MacCRATE: I renew my objection, your Honor.

THE COURT: I will admit it into evidence simply for the purpose of showing that it was sent and not for the truth of any of the statements therein contained.

(Plaintiff's Exhibit 105 for identification was received in evidence.)

MR. FARRELL: Your Honor, I will read 105.

(Plaintiff's Exhibit 105 in evidence was read to the jury.)

MR. FARRELL: Mr. MacCrate, I will offer now Plaintiff's Exhibit 107 which is dated April 29, 1963 and the prior marking was Plaintiff's Exhibit 19.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 107 for identification was received in evidence.)

MR. FARRELL: I will read Plaintiff's Exhibit 107, your Honor.

(Plaintiff's Exhibit 107 in evidence was read to the jury.)

Q Mr. Shippee, was this letter or the phone call referred to in this letter -- withdrawn.

Did you receive a phone call from Mr. Page prior to receiving this letter?

A Yes.

Q What did Mr. Page say to you?

A That Mr. Fischbeck was out of the country and would be due back shortly.

Q Did he say anything else?

A Not that I recall.

Q Did he tell you Phillips was not going to go ahead with the project?

A No.

Q Was this letter the first time that you knew that Phillips at that time had decided not to go ahead with the project?

A I didn't understand that.

MR. MacCRATE: Objection, your Honor.

THE COURT: Overruled.

MR. MacCRATE: As to his understanding.

THE COURT: He says that he didn't understand they weren't to go ahead with the project. I will let

the answer stand. He never understood that, apparently.

Reframe the question.

Q Was this the first notice that you had that Phillips would not go ahead with the markeint report?

A With the marketing report, exactly, but only that.

Q Was this the first notice you had that at that time they would wait for Prudential to obtain a quota?

A Yes.

Q Prior to that time had you been working with Phillips with the objective of obtaining a quota?

MR. MacCRATE: Objection, your Honor.

THE COURT: That does call for a conclusion, doesn't it? And we heard a lot about what he was doing with Phillips.

Q Was it your understanding you were working jointly with Phillips to obtain a quota?

A Yes.

THE COURT: All right, let's go forward.

MR. FARRELL: Your Honor --

THE COURT: Ask the next question.

Q At that time, Mr. Shippee, did you discuss this letter or the content of this letter with the employees of Prudential or with Mr. Chapman or Mr. Conn or Mr. Anderson?

MR. MacCRATE: Can we break that down?

THE COURT: Yes.

Q Did you discuss it with other employees of Prudential?

THE COURT: Exhibit 107?

MR. FARRELL: Yes.

A I discussed it with officers of Prudential Oil Corporation and discussed it with Mr. Anderson. I discussed it with Mr. Young and also discussed it with Mr. Fischbecki

Q Can you tell us the content of your discussion with Mr. Fischbeck?

A Yes.

Q Was that a meeting or over the telephone?

A Initially it was over the telephone. We had a later meeting.

Q When did the telephone conversation take place?

A The same day.

Q Can you tell me what you said to him and what he said to you?

A Mr. Fischbeck told me that he was sending the letter and told me what it was saying.

I asked him what that amounted to and he said simply they could not complete a marketing report until

they knew they had a quota. It was unrealistic. I asked him what else was involved and he said nothing.

I asked him would they complete the preparation of the application itself and he said yes, they would pring it and send it to us.

Q Did you discuss the letter with Mr. Chapman at or about that time?

A Yes, I believe it was the following day.

Q Can you tell us the contents of that discussion? Was that over the telephone or face-to-face?

A Over the telephone.

MR. MacCRATE: I am going to object to the contents of that conversation.

THE COURT: At this point I will sustain that objection.

He may testify he had discussions with Mr. Chapman and give the date but the substance of the discussion I will sustain the objec-tion.

MR. FARRELL: Your Honor -- all right. I will come back to that if I have to.

THE COURT: All right.

Q Did you have a discussion with Mr. Chapman then?

A I did.

Q Over the telephone?

A Yes.

Q Was it concerning the contents of the letter, 107?

A Correct.

MR. FARRELL: Mr. MacCrate, I am going to offer Plaintiff's Exhibit 108 which is a letter of 4/29/63 and the old number is P-30.

MR. MacCRATE: I have the same objection to this, your Honor.

THE COURT: I will make the same ruling with respect to the matters concerning Mr. Anderson and take it subject to connection.

(Plaintiff's Exhibit 108 for identification was received in evidence.)

MR. FARRELL: I will read Exhibit 108.

(Plaintiff's Exhibit 108 in evidence was read to the jury.)

(Continued on next page.)

Q Now, Mr. Shippee, thereafter did you receive from Phillips reproductions of the brochure which was previously received in evidence as Plaintiff's Exhibit 214?

A Yes.

Q Now I show you Plaintiff's Exhibit 215, and the prior number is D-33, date, June 1963 --

MR. FARRELL: Your Honor, there is a special section at the end for all the brochures.

THE COURT: Yes, I understand.

Q -- and ask whether this is one of the copies you received back from Phillips?

A It is.

MR. FARRELL: Your Honor, I offer this.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q When the document was received, by whom was it received, Mr. Shippee; by you personally?

A It was received By my office.

Q Do you know how it came into your office?

A By messenger.

Q Was it in this brown notebook in which it is today?

A No.

Q This is a looseleaf notebook, is it not?

A Yes.

Q Were there tab markings in the dividers that are spread through the notebook today which have just empty spaces without any notation in them at this time?

A We supplied those subsequently.

Q Were the dividers in the material you received from Phillips or not?

A No.

Q Now, is it your testimony that every page that is in this looseleaf notebook today was received from Phillips and that there have been no additions to it and nothing taken out of what you received from Phillips?

A I believe so.

Q Was there a binder of some kind on the document at that time?

A No, there were sheets of each page, and we had to then collate them, put in the divider pages and put the tabs in the divider pages and put them in a looseleaf book.

Q Would your testimony be the same with respect to the last page of the document which is a foldout sheet bearing the title Universal Oil Products Company?

A I believe so.

Q And it is your testimony that this document

dated April 17, 1962, was reproduced by Phillips for you in 1963?

A I believe so.

Q Do you know who assembled the volume which we see today as P-215?

A By personnel of Prudential Oil Corporation at the time. I don't know particularly who.

Q When was it put into the brown notebook?

A In early May, 1963.

Q And since that time this document -- since early May of 1963 -- has been in this looseleaf notebook, in the possession of yourself?

A Of Prudential Oil Corporation, yes.

Q Well, there have been different Prudential Oil Corporations and you are saying that in your law offices it was kept at all times?

A Yes.

MR. MacCRATE: I have no further questions.

BY MR. FARRELL:

Q Mr. Shippee, I would like to clarify. This was produced by Prudential subsequent to the start of this lawsuit?

A Correct.

Q And thereafter it was in possession of your

counsel?

A Correct.

THE COURT: Was the offer to be deemed to exclude the cover?

MR. FARRELL: No, it is not, because he testified he put it in the cover contemporaneously.

THE COURT: It is clear to the jury that Phillips had nothing to do with the cover.

MR. FARRELL: Yes.

THE COURT: I will accept in evidence with that understanding.

(Exhibit P-215 was received in evidence.)

Q Mr. Shippee, how many copies were reproduced of that last exhibit, 215, by Phillips?

A As I recall it there were 50 copies made.

Q And you received it?

A No, as I recall we received one-half or 25.

Q Do you know what happened to the other 25?

A No, I don't.

MR. MacCRATE: Your Honor, I think there is a lack of clarity on the record. The witness has testified that uncollated sheets of paper were delivered. These were not delivered as copies of any document.

THE COURT: Well, they are uncollated sheets of

printed material and whether you want to call them copies or not is a matter for the jury.

As I understand it, he is now saying he got 25 copies of each page, delivered to Prudential.

Is that right?

THE WITNESS: That's correct.

THE COURT: How do you know there were 50?

THE WITNESS: They told me --

THE COURT: Who is "they"?

THE WITNESS: Mr. Holland. Originally I asked Mr. Holland for ten copies.

Q Mr. who?

A Mr. Holland of Phillips Petroleum. He was in charge of these corporate services, and he then told me he had made 50 and how many did I want, and I said, "Send me 25 and hold 25," and he sent me 25, including he returned the original book from which he had made these.

THE COURT: All right.

Q That is Exhibit 214 which you testified about earlier?

A Yes, it is.

Q Thereafter, Mr. Shippee, did you or someone at the Prudential collate these sheets and put them in covers such as the cover now on Exhibit 215?

THE COURT: We have had all that, I am sure.

A Yes, we did.

MR. FARRELL: They are diffent colors, your Honor, and it is going to be clear -- believe me, I know --

THE COURT: Okay. He put them in 25 different covers.

Q You put them in different covers?

A Yes.

Q Did they have different colors?

A They did.

Q What were the colors?

A Brown and red.

Q Any blue?

A Yes, there were blue.

MR. FARRELL: Now I am going to offer Plaintiff's Exhibit 112, which is a letter dated May 29, 1963, prior number D-78.

MR. MacCRATE: Objection, your Honor, as irrelevant.

THE COURT: Hand a copy to the Clerk, please.

Well, I will take it subject to connection. I don't think we need the letter. Can't this witness just tell us what he did with the copies of the report?

MR. FARRELL: Well, your Honor, I thought it

would be easier to take the letter.

THE COURT: It isn't, because the letter may be subject to hearsay objections, although such objections were not raised.

Let him tell us what they did with the book.

Q What did you do with the book, Mr. Shippee?

A We collated them, put them in the looseleaf. We then distributed them. We sent three of them to Washingon, to Mr. Oscar Chapman. We gave one to Mr. Young, one to Mr. Anderson, one to Mr. Little, one to Mr. Wright, one to Mr. Willey. We gave one to Warbug and one to Kuhn Loeb.

Q I --

A We gave one to Mr. Fischbeck.

Q I show you --

MR. MacCRATE: Has the witness finished his answer? He keeps adding and Mr. Farrell keeps interrupting.

THE COURT: I didn't really think Mr. Farrel was interrupting.

Have you finished the names of the people you gave the copies to?

THE WITNESS: I have.

THE COURT: All right.

Q Mr. Shippee, in the copies you gave to Mr. Chapman did you include copies of Plaintiff's Exhibit 211 which is identified 211, which I now show you?

A Yes.

MR. FARRELL: Your Honor, I offer this.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q How physically, Mr. Shippee, was 211 included in these volumes that you are speaking about?

A Separately.

Q It was separate?

A Yes.

Q This was not in the looseleaf binders?

A No.

THE COURT: Is that D-11, D-81 under the old numbering?

MR. FARRELL: 211? Yes, it is, your Honor, I'm sorry.

THE COURT: Thank you.

Q This is a document dated December 1960.

From whom did you obtain this?

A Mr. Coan.

Q And how many copies did you obtain from Mr. Coan?

A I don't recall.

Q Did you send a copy of this to each of the individuals whose names you have just referred to as receiving copies of P-215?

A No.

Q To which of those people did you send copies of this?

A Only to Mr. Chapman.

MR. MacCRATE: I have no objection, your Honor.

THE COURT: It will be received in evidence.

(Exhibit P-211 was received in evidence.)

BY MR. FARRELL:

Q Now, Mr. Shippee, I show you a document --

MR. FARRELL: Forgive me, your Honor. This has not been pre-marked.

THE COURT: All right. Give it a number.

MR. FARRELL: 223.

THE COURT: Is it in the pretrial order, this document?

MR. FARRELL: No, your Honor, it is not. We overlooked this document. However, we wrote a letter to Mr. MacCrate that we were going to introduce this.

(Exhibit P-223 was marked for identification.)

THE COURT: Why don't you hold that one in

abeyance and we will talk about that after I excude the jury.

Let's finish up what we can do here. At the end of the day I will take it up.

Hand it to the Clerk, please.

BY MR. FARRELL:

Q Mr. Shippee, subsequent to your distribution of the brochures which you have referred to were you telephoned by anyone at Kuhn Loeb?

A Yes.

Q Did you have a discussion with them concerning the brochure?

MR. MacCRATE: Who is the person, please?

Q Yes, who was it?

A Mr. Shea of Kuhn Loeb, and also Mr. Blinken of E.M. Warburg.

MR. FARRELL: Now, Mr. MacCrate, I will offer Plaintiff's Exhibit 111, previously 44-J.

MR. MacCRATE: Objection. No connection to Phillips.

MR. FARRELL: Your Honor, this is not offered -- as I have explained, there are two or three phases of this case I am trying to prove.

THE COURT: I will take it up with you during

the next recess.

Who is Don therein named, if you don't mind?

MR. FARRELL: Blinken, Donald Blinken at Warburg.

THE COURT: All right.

MR. FARRELL: Mr. MacCrate, I am now going to offer Plaintiff's Exhibit 116, which is dated 6/6/63, and it is Defendant's Exhibit 44-K-1.

MR. MacCRATE: Objection. No connection to Phillips.

THE COURT: I will reserve on that.

Q Mr. Shippee, what did you do next on the project after you received the letter from Mr. Fischbeck which was just introduced into evidence?

A We proceeded to complete the application and put it in presentation form and send it to Washington for filing through Secretary Chapman.

Q And that's putting the material in the books and that sort of thing?

A Correct.

(Continued on next page.)

Q Now, did you hold any discussions with Mr. Anderson, with Mr. Chapman or with Mr. Conn or the officers of Prudential about your next step?

A Yes.

MR. MacCRATE: Could we have that --

THE COURT: That will have to be taken separately.

Q Tell me the discussions you had with the officers of Prudential?

MR. MacCRATE: Could we have those identified?

Q Identify them as you answer?

A The middle of May when this presentation was sent to Washington --

MR. MacCRATE: If this is the content of the discussion I object to it, your Honor.

THE COURT: I don't think it is responsive to any question as to what I understand you said so far.

Q Did you have discussions with the officers of Prudential?

A Yes.

Q As to your next step?

A Yes, we did

Q What did you say?

MR. MacCRATE: With whom?

A I discussed with Mr. Young --

THE COURT: Wait a minute now. Let counsel frame the question. The question apparently was objected to as being insufficiently precise. The names should be listed.

MR. FARRELL: I thought the answer would elicit them.

Q With whom?

A Mr. Young and Mr. Willey.

Q What was the content of those discussions?

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained. I will permit him to tell when they took place and how long a period of time they encompassed.

Q When did they take place?

A In mid-May on the say day that we mailed the presentation to Secretary Chapman in Washington.

Q These discussions, did they refer to the proposed petrochemical project?

MR. MacCRATE: Objection.

THE COURT: I assume that has already been answered. I will allow him to answer yes or no.

A Yes.

Q Did any of the discussions concern Phillips Petroleum?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: I will allow that answer to stand but I will not take the substance of the discussion at this time.

You may tell how long a period of time they occupied.

Q How long did these discussions take?

A From lunch through to the end of the day.

Q Did you discuss with Mr. Anderson the project at about that time?

A That evening.

Q Mid-May?

A The same day, that evening, on the way home.

Q I am sorry to interrupt you, the discussion in June. Go ahead.

MR. MacCRATE: That is not the testimony so I object to the form of the question.

THE COURT: Please reframe it so it is clear.

Q Mr. Shippee, did you have discussions -- talking about the receipt of the letter from -- this is in May, yes. After the receipt of the letter from Mr Fischbeck did you have discussions with Mr. Anderson?

THE COURT: Besides the letter to Mr. Anderson

we have already taken?

Perhaps I should excuse the jury for the day.

Members of the jury, we will resume at 10 o'clock tomorrow morning and you may withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: May we take up these Exhibits 111 and 116 at this time?

MR. FARRELL: Yes, your Honor.

What is the basis by which I could admit either or both of them?

MR. FARRELL: These are exhibits which establish work which Mr. Shippee and Prudential were doing on the project.

THE COURT: He can tell us what he did, can't he?

MR. FARRELL: Yes, but he also has correspondence, I can show the correspondence. That is part of what he did.

Moreover, the letter from Mr. Chapman to Mr. Coan which was sent to Mr. Shippee is again part of the effort at promoting the project and I think that the documents --

THE COURT: Had he retained Mr. Chapman at this time? Had Prudential retained Mr. Chapman?

MR. FARRELL: No, they did not have any retainer

ars

agreement.

THE COURT: I don't see how you could show that the activities of Mr. Chapman reflectedby Exhibit 116 for identification are the efforts of Prudential.

This is a letter from Chapman to Jack Coan.

MR. FARRELL: In the original meeting in October of 1962 Mr. Shippee testified that all of them were working together on the project and the efforts of Mr. Coan and Mr. Chapman at that time are also the efforts of Prudential.

THE COURT: I don't see that at all. Were Mr. Coan and Mr. Chapman given a joint venture interest?

MR. FARRELL: Mr. Chapman was offered one by Mr. Shippee.

MR. MacCRATE: If the basis for admissibility is that Mr. Anderson was a joint venturer with Mr. Shippee, there is still the question of admissibility as against Phillips. And here, with resepct to Mr. Chapman, if it is because he was a joint venturer, that does not in any way make this document admissible against Phillips.

THE COURT: There is no threshold showing here that Chapm an was a joint venturer of anybody at June 6, 1963. You have just conceded to me this letter was not written at the direction of plaintiff or its officers or that they caused it to be done or can take credit for it

ars

having been written and it seems to me, Mr. Farrell, if you get into the record information which is not competent evidence, you put the Court in the position of walking into unnecessary error. We don't need it.

This witness is being permitted to tell what he did and what the people at Prudential did and what Prudential caused to be done and I just don't see any basis for taking a letter from Mr. Chapman to Coan at this time.

I think he ought to deal with the other one while we are talking about it, 111.

MR. FARRELL: Your Honor, there was one other point. There is testimony that Mr. Shippee had agreed to pay Mr. Chapman and that agreement was never carried out but there has been the relationship between the two as of that time.

THE COURT: You just conceded a few moments on the record here that this letter, 116, was not written at the behest of plaintiff.

MR. FARRELL: That is true.

THE COURT: While Chapman was not acting as plaintiff's agent. Apparently I couldn't find that he was an agent for Phillips either so at this stage of the record I am going to sustain the objection to 116 for

ars

identification.

I am prepared to talk about 111. All I see in 111 is that there isa dispute with the gentleman known as Don who I understand is Mr. Gruber --

MR. MacCRATE: Mr. Blinken.

THE COURT: I beg your pardon, of Warbug & Company and I think if the witness corrected these books by eliminating the name of Mr. Blinken, he probably could testify to that without the necessity of the letter. But the letter is really transactions between Mr. Blinken of Warburg and Prudential as to which Phillips is not shown to be a party. It is a private dispute between them.

MR. FARRELL: Yes, your Honor, but again if I may explain --

THE COURT: It is just what we used to call res inter alios.

MR. FARRELL: There are two phases to this case. The point is that we were working on what we regarded as a project that had some merit and was protectable information, business information and ideas with respect to the petrochemical project we were going to put together. It is true Phillips wasn't present during this time.

It is probably true in nine-tenths of the cases

under that theory that the defendant was not present when the plaintiff was actually doing the work developing the thing that the defendant is then accused of taking.

THE COURT: I am permitting him to tell what he did or Prudential's people did and I am permitting him to tell everyting he said to Fischbeck or Coan, anything that the agents said. I opened the door to you as to Mr. Anderson although his position in the case is not entirely clear on this trial record.

I just don't see any basis for admitting this exhibit which shows on its face a trivial dispute between persons in Warburg and Prudential.

MR. FARRELL: Very well, youe Honor, if that is your ruling.

THE COURT: I am going to ask you to try to take a logical approach with these documents. Don't give me documents which I would fall into error if I permitted them to be received.

MR. FARRELL: I don't agree that you fall into error but I want to explain my approach which has been to show everything, either documents or by testimony that has been done.

THE COURT: He can tell what he did but you don't advance the project by this Exhibit 111. It is a trivial

ars

dispute with Warburg with which Phillips is not concerned as I can see it.

MR. FARRELL: Are you going to take up the other document?

THE COURT: Any time I see a document that is not on the pretrial order I consider that a red flag.

What is this Exhibit 223?

MR. FARRELL: That is a document produced by Mr. Chapman. This was a copy of one of the brochures sent to Mr. Chapman with the letter that I offered in evidence and it has been identified by Chapman at his deposition, produced by him and Mr. Shippee will identify that as a document given to Mr. Chapman.

THE COURT: He has already done that.

MR. FARRELL: I want that document in evidence.

THE COURT: To get it in evidence you have to read the deposition of Mr. Chapman.

MR. FARRELL: No, I don't. I think Mr. Shippee can identify it.

THE COURT: How do you get it to be binding on Phillips?

MR. FARRELL: It gets binding on Phillips because there is a stipulated exhibit dated August 8, that is a stipulated one which says, and this is by an associate

ars

of Mr. Chapman at that time, Michael Shea on Wednesday, August 7, Mr. Chapman had lunch with Miller Conn of Phillips Petroleum Company. The purpose of the luncheon was to give Mr. Conn an opportunity to begin the study to determine whether or not Phillips was to take an active interest in the establishment of the chemical product in Puerto Rico. Mr. Conn received from Mr. Chapman a copy of the latest study, namely that.

THE COURT: How do I know that? Does it say so in the exhibit from which you are reading?

MR. MARKS: It is an inference that the jury can draw from this document which says they took a copy of the present study and there has been other testimony, your Honor, that would link it up as well.

MR. MacCRATE: The document before your Honor was produced by Mr. Chapman within the last several years when his deposition was taken znd it was not something that was given to a third party. It was what he still had apparently in 1973.

MR. FARRELL: He got more than one.

THE COURT: If there is an evidentiary basis for showing that Chapman delivered this to Phillips --

MR. FARRELL: Mr. Conn took a copy of the present study, that we have from Mr. Chapman who points

ars

out that is the only study that they had.

THE COURT: How do I know that is the same brochure given by Mr. Chapman.

MR. MARKS: I don't think there is any doubt in the record but if there is any doubt it is a factual issue for the jury which they can resolve.

THE COURT: Perhaps when you read Mr. Chapman's deposition I will take it. It ought to be received if what they say is true.

MR. MacCRATE: But the basis for its admissibility or non-admissibility would be what Mr. Chapman has to say about it.

THE COURT: All right. You all know except me.

MR. MARKS: Mr. Chapman testified that he recei it from Mr. Shippee.

THE COURT: Well, all right, if that is what he testified when you read Mr. Chapman's deposition you can renew your offer of 223 and I will rule at that time.

(Adjourned to Wednesday, January 7, 1976, at 10.00 o'clock a.m.)

---

PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

---

New York, January 7, 1976;
10.00 o'clock a.m.

(Trial resumed.)

- -

(Jury present.)

N A T H A N M. S H I P P E E , resumed.

THE COURT: You may resume, Mr. Farrell.

DIRECT EXAMINATION (Continued)

BY MR. FARRELL:

Q Mr. Shippee, calling your attention to the meeting that you testified about yesterday with Mr. Anderson in November 1962, did you discuss at that time the source of the feedstock for the petrochemical complex in Puerto Rico?

A Yes.

Q What did you say to him at that time and what did he say to you?

A I asked him about the comparative advantages of several oil companies and he mentioned two criteria. One was that we should use Venezuelan oil so we would have

the support of the State Department and the other was that we should have a partner to carry out this project?

Q What did you say to him

A I asked him which of the several companies that we listed he would favor and he said he knew he could get a decision from Phillips at the top, they had Venezuelan oil and that he would attempt to get them to give us some sort of support on the project.

THE COURT: Who is it that said this to you?

THE WITNESS: Mr. Anderson said it to me at the meeting on November 9 in his office.

Q From that time forward, Mr. Shippee, was it your concept that this petrochemical complex in Puerto Rico would be fed with Venezuelan crude oil?

A Yes.

Q Or Venezuelan feedstock of any kind?

A Yes.

Q Turning your attention to January 1963, did you meet with Mr. Durand, the administrator of EDA at that time?

A Yes, sir.

Q Would you tell us who was present and where it took place?

A Mr. Irizarry, the New York representative of EDA

and Mr. Anderson, in the office of EDA on Fifth Avenue.

Q Can you tell me what was discussed and who said what?

A I introduced Mr. Anderson to Mr. Durand. Mr. Durand told Mr. Anderson that the project that Prudential had discussed with him in Puerto Rico had the support of the Commonwealth and that he favored the Venezuelan oil.

He went on to describe that the then president of Venezuela had been a refugee in his home prior to his being elected as president and that they were very close and this would have a beneficial effect on the Caribbean or the poor economy in Venezuela at that time.

Mr. Anderson assured Mr. Durand that the State Department in his opinion would support the project because they were trying to solve some problems in Venezuela at the time and expressed doubt that 60,000 barrels was an over-large refinery but in principle they should have asked for the 60,000 barrels and perhaps end up or be satisfied with less.

Q Is that all you remember about that meeting?

A The meeting was short because Mr. Anderson had to go to a directors meeting of Goodyear in Cleveland and the meeting ended within about 15 minutes, yes.

Q Turning your attention to the meeting in February 1963 with Mr. Fischbeck which you testified about yesterday, did you at that meeting discuss with Mr. Fischbeck possible samples of oil to be used as feedstock?

A Yes.

Q Will you tell me the contents of those discussions?

THE COURT: Didn't we go through all this yesterday?

MR. FARRELL: I failed to ask him a couple of questions. I just want to fill in.

A The specification of Venezuelan oil, I told Mr. Fischbeck th at we had to have Venezuelan oil and asked him for samples of the stock that they could supply from Venezuela.

I also told Mr. Fischbeck that the application under the regulations had to be signed by an oil company with an importing history and that I understood that Phillips would sign the application within the project. That it was a valuable item, it could be $60,000 a day that we weren't giving away and would share on the same basis that we would share the whole project.

Mr. Fischbeck told me that he would get us the oil samples and he would pass the message to Bartlesville about signing the application and would let us know.

Q Did you report that to Mr. Chapman?

A I did.

MR. MacCRATE: I move to strike the last question and answer, your Honor, as to what he reported to Mt. Chapman.

THE COURT: I will reserve decision on the motion to strike.

Q Mr. Shippee, at the close of yesterday's testimony you told us that you had been advised -- the exhibit was introduced by Mr. Fischbeck that Phillips would not proceed with the signing of the application.

MR. MacCRATE: Could we identify the exhibit for the record?

THE COURT: By number, if you please.

MR. FARRELL: Yes. The exhibit was 107 and I believe Mr. Shippee testified that he also received a telephone call to the same effect.

THE COURT: What is the question now?

MR. FARRELL: I was just refreshing his recollection where we were yesterday.

THE COURT: That you don't need to do. The jury remembers where we were yesterday.

MR. FARRELL: Mr. MacCrate, I now intend to offer Plaintiff's Exhibit 117 for identification which is a letter

from Mr. Shippee to Mr. Chapman dated June 6, 1963. The prior number was Plaintiff 561 and several other number.

MR. MacCRATE: I object to this document on several grounds, your Honor.

May I approach the side bar?

THE COURT: Yes, certainly.

(At the side bar.)

MR. MacCRATE: Plaintiff's Exhibit 117 for identification is one of several copies of a letter. On the other copies it appears to have the notation that blind carbon copies were distributed to persons not indicated on this copy.

THE COURT: My copy of the proposed exhibit has this "S".

MR. FARRELL: Those are Mr. Shippee's initials, your Honor.

MR. MacCRATE: There are, below this line on some copies but not on this copy an indication that there were blind carbons that went which I think is all part of the document.

THE COURT: Yes, certainly.

MR. MacCRATE: If it is being offered.

THE COURT: It doesn't show on mine. The problem of a copy being incomplete, I have to insist that the

original be found or else stipulate as to what is on the original.

MR. FARRELL: Do you have a copy with the blind copies on it, Mr. MacCrate?

THE COURT: Who are they?

MR. MacCRATE: I don't have the notation before me, your Honor.

THE COURT: Is it important to the case?

MR. MacCRATE: I think it may be.

MR. FARRELL: Will you show us your copy?

MR. MacCRATE: In addition we object on the grounds that this is a communication from Mr. Shippee to Mr. Chapman at a time when Mr. Chapman had no relationship with Phillips.

THE COURT: In view of the fact that I have been told that a copy went to Mr. Anderson, I will take it subject to a motion to strike or connection -- I went through all this yesterday and my intention is to give you a continuing objection or reserve the motion as to anything affecting Anderson while this witness is on the stand.

MR. FARRELL: I understand, your Honor.

THE COURT: You may be deemed to have a continuing objection as to all papers which went to Anderson or are offered on the basis that they went to Anderson.

Would that be satisfactory to you? Do you need it each time?

MR. MacCRATE: So long as that continuing objection is on the record I am satisfied with that, your Honor.

THE COURT: All right.

I will require either the original complete copy to be offered on 117 and when that is done I will receive it subject to connection.

MR. MacCRATE: This is a document from the plaintiff's file.

MR. FARRELL: Is this on the copy that you have?

MR. MacCRATE: Yes.

THE COURT: Why would it be that -- I guess this is a carbon copy of an original letterhead?

MR. FARRELL: Yes.

THE COURT: You may renew the offer when you have a complete copy.

MR. FARRELL: I will get right now.

THE COURT: Let us go forward.

(In open court.)

MR. MacCRATE: Your Honor, I believe the difficulty has been resolved. My copy was like your copy of this particular document.

THE COURT: You have a copy which may be received?

MR. FARRELL: yes.

THE COURT: Exhibit 117 will be received subject to connection.

(Plaintiff's Exhibit 117 for identification was received in evidence.)

MR. FARRELL: I will read this exhibit to the jury, your Honor.

(Exhibit read.)

MR. FARRELL: At this time, your Honor, I am going to offer Plaintiff's Exhibit 118 for identification which is a letter dated June 13, 1963. The prior number was Plaintiff's 198.

(Continued on next page.)

MR. MacCRATE: This is subject, your Honor, to my continuing objection.

THE COURT: Is it essential? Can't this witness be asked, did you thereafter schedule a meeting with Mr. Anderson, and did you meet with him, and who was present?

MR. FARRELL: Your Honor, I want to read the letter. I think the letter is appropriate evidence.

THE COURT: Did they have the meeting?

MR. FARRELL: Yes, your Honor.

THE COURT: Ask the witness about the meeting.

MR. FARRELL: Your Honor --

THE COURT: I regard this Exhibit 18 as purely cumulative, unnecessary to this trial, and unduly prolonging the case.

MR. FARRELL: Your Honor, I'd just like to state that as Mr. MacCrate pointed out --

THE COURT: No argument. I will receive it in evidence, but you won't read it. Now, get the testimony of Mr. Shippee finished. Ask him, did he have a meeting.

(Exhibit P-18 was received in evidence.)

THE COURT: I can't waste time here, gentlemen. I have to move this case along.

Q Mr. Shippee, thereafter did you arrange a

meeting with Mr. Anderson and Mr. Chapman?

A I did.

Q Can you tell us where that meeting took place?

A In Mr. Anderson's office in New York.

Q Who was present?

A Mr. Young, Mr. Coan, myself, Mr. Chapman and Mr. Anderson.

Q Do you know how long the meeting took?

A Yes. It was the better part of the afternoon, over two hours.

Q Can you tell us, to the best of your recollection, who said what, the substance of the conversation, and who it was that said it?

MR. MacCRATE: Objection, your Honor, until the time and date of this is fixed.

Q Do you have the date?

A It was July 2nd, after lunch. I greeted Mr. Chapman when he came into the office. I greeted the others. I was in the office first. When we were all assembled, we went to Mr. Anderson's suite. We met together in his suite for most of the meeting.

The main topics of the meeting I --

MR. MacCRATE: Your Honor, the main topic I

object to.

THE COURT: Sustained. Strike it out.

A (Continuing) I led the discussion and the discussion began with the matter of Phillips signing the application for the import quota, and we requested Mr. Anderson to complete the necessaries so that Phillips would sign the application and would go to Washington and work with Mr. Chapman to complete it.

I took up the matter of the Warburg departure from the group, and we all agreed with the action I had taken earlier and had reported to them by phone.

I discussed with Mr. Anderson, in front of Mr. Chapman and the others, my visit to his firm in Washington and his partners about his compensation, and my statement to them that Mr. Anderson would decide how they would be paid and what shares they would have, and Mr. Anderson agreed in front of me and the others that he would handle --

MR. MacCRATE: Your Honor, I move to strike. We are getting abck into this "agreed" syndrome.

THE COURT: Really, Mr. Shippee, after three days of this case, almost three days, you ought to understand, agreement is a matter of conclusion for the jury. So please, just give us the substance of what you said at that

meeting, what Mr. Anderson said as best you recall it, and what Mr. Chapman said, and after the jury finishes listening to it they will decide whether Mr. Chapman agreed to anything or not.

A Business language is --

THE COURT: I can't have it.

A I described to Mr. Anderson my visit in Washington, and Mr. Anderson stated to me and the others present that he would undertake to allocate the shares among all the participants when the project was completed and based on the contributions made in his opinion.

Q Anything else happen at that meeting, Mr. Shippee?

A Yes. Towards the end of the meeting, Mr. Anderson asked if we would go to the conference room and let him speak along to Mr. Chapman. We went to the conference room -- that would be Mr. Coan and myself; Mr. Chapman and Mr. Anderson remained behind, and it was perhaps fifteen minutes later that they joined us.

Mr. Anderson then told me and the others that Mr. Chapman would be the quarterback for the project in Washington, that Mr. Anderson would take care of the matters raised by us in Bartlesville with Phillips, and that Prudential would now turn their attention to working on the

satellite plant question because we had to satisfy the Interior Department that activities were undergoing to bring or interest chemical companies to come to the island.

Q Mr. Shippee, the next day you had the plane crash?

A Yes.

MR. FARRELL: Your Honor, in the interest of chronology at this time I am going to read to the jury four paragraphs of the stipulated facts. This is events in 1963, and I thi nk that this would bright it right up,chronologically, through Mr. Shippee's testimony.

THE COURT: All right.

MR. FARRELL: H. Some developments during 1963:

42. Under date of March 20, 1963, EDA Administrator Rafael Durand sent a letter to Secretary Udall with copy to Cordell Moore, Oil Import Administrator, which letter has been marked at pretrial proceedings as Joint Exhibit 39.

43. In early August 1963 Chapman spoke with the president of Phillips, Stanley Learned. Chapman expressed confidence that the necessary oil import quota could be obtained by Phillips for a project in Puerto Rico and Learned expressed interest in exploring this possibility.

On August 7, 1963, Chapman and Micheal W. Shea, one of his law associates, met in Washington with representatives of Phillips. A memorandum of this meeting prepared by Michael Shea dated August 8, 1963 has been marked at pretrial proceedings as Joint Exhibit 40.

And, your Honor, I will read that memorandum.

This is on the letterhead of Chapman & Friedman.

(Mr. Farrell read to the jury from Joint Exhibit 40 in evidence.)

MR. FARRELL: 44. In October 1963 Coan arranged a meeting for representatives of Phillips with representatives of the New York office of EDA, including Diaz-Hernandez.

Q Now, Mr. Shippee, when was the next conversation that you had with Mr. Anderson concerning the proposed project?

A It was at the -- immediately following the assasination of President Kennedy.

Q Was that the first time you spoke to Mr. Anderson on the project after your meeting of July 2nd?

A Oh, no, I thought you meant from what you had just read.

Q No.

MR. MacCRATE: I think the question is obviously objectionable as to form. Perhaps it could be withdrawn and reframed.

MR. FARRELL: Well --

THE COURT: He was asked when if ever he next spoke with Mr. Anderson. Meet or spoke with him.

Q Speak with him after your July 2nd meeting?

A After the July 2nd meeting, the next day I went on a business trip to --

THE COURT: No, when did you next speak with Mr. Anderson?

THE WITNESS: July 4th.

Q After the plane crash?

A Yes.

Q What happened? How did you talk to him then?

A It was in the newspapers that I had been in a plane crash with many fatalities, and he contacted my home. I was one day in the hospital in Rochester, then I convalesced at home for a couple of weeks.

He called me on the day after the crash.

Q Did you discuss the project?

A He wouldn't let me. He wanted to know how --

Q Just tell me if you discussed the project.

A No.

Q When was the next time you discussed the project with Mr. Anderson?

A In the following week.

Q Was that by telephone?

A By telephone.

Q What did he say to you and what did you say to him?

A In the following week I called him and asked him how the project was going. He told me that Phillips would sign the application and that everything was all right, I shouldn't be concerned.

Q Now, thereafter -- that is the full substance of that conversation?

A Yes.

Q Thereafter, did you speak with Mr. Anderson concerning the project?

A Yes.

Q When was the next time? If you recall.

A We had frequent conversations. I went to the office for the first time, the first week in August, which would have been about three weeks later, and on my first day there I visited with him. It would have been early August.

Q Did you discuss the project?

A Yes.

Q What did he say to you and what did you say to him, in substance?

A Mr. Anderson told me that Phillips was going to be in touch with Chapman in Washington on the application, that they would sign the application. He told me that our job was to work on getting the chemical plants and I told him that Young and Willey were working on that and I would also start.

Q Did you have further conversations with Mr. Anderson through the year 1963 concerning the project?

A Yes.

Q Can you tell me, to the best of your recollection, when those conversations took place?

A Those conversations normally took place in his limousine, driving back to Greenwich, and that would have been frequently, during the summer and fall of 1963.

Q And in these conversations, did you discuss the proposed petrochemical project?

A Yes, on each occasion.

Q Tell me, with respect to the conversations you remember, give the approximate time and what was said.

A I would report to him on the activities of Young --

MR. MacCRATE: Your Honor, I object to what he would do. This is a question of a whole series of conversations. The witness should be asked to identify the time --

THE COURT: If he can, he should. Please reframe the question.

Q Tell me, to the best of your recollection, the time of any conversations with Mr. Anderson and the substance of those conversations.

A Except --

THE COURT: May I offer a suggestion?

MR. FARRELL: Yes.

THE COURT: If these are just general conversations where Mr. Anderson told him "Everything's going great," and he said "I'm glad," I wouldn't waste time with it. If there is some specific fact that Mr. Anderson stated during a particular week or month, then I think it is important to bring it out.

MR. FARRELL: I think I will do that. I will just ask about one conversation.

THE WITNESS: Specifically, after the assasination --

Q Wait, I'll ask the question.

In the conversation you referred to, after the assasination, where did that conversation take place?

A The conversation took place in Mr. Anderson's limousine en route to Greenwich.

Q What was the substance of that conversation?

A The substance of the conversation was the impact on the whole procedure to obtain an import quota with the advent of a new President, who was from Texas, and who was known to be "oil oriented."

We discussed at length whether we should redirect the application and Mr. Anderson advised me to wait because he felt that a change could now be made in government, in the executive branch, which would facilitate the whole project.

THE COURT: He told you to wait. He told you to hold up on the application?

THE WITNESS: No, he advised that we would all better wait, because he felt some changes would be made in the executive department.

Q Mr. Shippee, during this period in the latter portion of '63, did you do anything, did you perform any work with respect to the petrochemical project?

A Yes.

Q What did you do?

A I pursued the chemical companies to interest them in the prospect of setting up branch plants in

Puerto Rico.

MR. MacCRATE: Your Honor, I move to strike unless there is a detailed statement --

THE COURT: I will permit to to stand. If you want to ask him on cross examination what companies, when, and where, and who he saw there, that will be perfectly appropriate. Let's go forward.

MR. FARRELL: I will now read, your Honor, again, for the sake of chronology from the stipulated facts.

I. Phillips' submission to EDA of a Proposal for a Project in Puerto Rico.

(46) Stanley Learned addressed a letter dated December 16, 1963 to Rafael Durand. The letter, which has been marked at pretrial proceedings as Joint Exhibit 43, was taken to Puerto Rico and delivered to Rafael Durand by Diaz-Hernandez prior to December 20, 1963.

MR. MacCRATE: Your Honor, I believe a paragraph from the stipulation has been omitted. I don't know if it was.

MR. FARRELL: I didn't mean to. I will read that. I'm sorry.

THE COURT: All right, paragraph 45 may be read.

MR. FARRELL: I overlooked that.

(45) A memorandum dated November 7, 1963, was

delivered by Coan to Waldby which has been marked at pretrial proceedings with a covering letter as Joint Exhibit 41. By letter agreement dated November 22, 1963, Phillips retained Coan and Omega as from November 1, 1963, which letter agreement has been marked at pretrial proceedings as J-42.

There follows the paragraph I just read, referring to J-43, which I will read without the attachments.

(Mr. Farrell read from J-43 in evidence to the jury.)

MR. FARRELL: Continuing with the stipulation to bring this chronologically up to date:

"In January 1964 executives of Phillips met in Puerto Rico with officers of EDA and other agencies of the Commonwealth Government to explain Phillips' proposal for establishing a project in Puerto Rico. On January 3, 1964 Stanley Learned, Paul J. Parker, W. C. Hewitt and Roy Waldby of Phillips and Marin Friedman of the law firm of Chapman & Friedman, counsel to Phillips, met in Suan Juan with EDA Administrator Rafael Durand, Sanchez Rivera, President of the Puerto Rico Industrial Development Company (PRIDCO) and Sam Van Hyning, a consultant to EDA. Also on January 3, 1964, the Phillips representatives met with Diaz-Hernandez, Van Hyning and certain officers of PRIDCO, including Sanchez Rivera, President, Varilo Oyding, Vice-President for Finance and Rafael Ignacio, Vice-President and Jose Munez, Assistant Vice-President for Development. On January 4, 1964, the Phillips group, accompanied by Owen Martinez of the PRIDCO staff, toured the island by plane and car to view the possible sites on the South and West Coasts of Puerto Rico for the proposed complex.

"At the meeting on January 3, 1964 with representatives of the Commonwealth Government, Learned stated that the purpose of the visit was to explain the nature of Phillips' proposal and the organization and capabilities of Phillips to carry out such a proposal. Following Learned's statement, W. C. Hewitt described the various business activities of Phillips. At the same time, with a letter to Durand dated January 2, 1964, a brochure was submitted by the Phillips representaive to EDA entitled 'Establishment of a Core Chemical Industry in Puerto Rico.' The letter of transmittal has been marked at pretrial proceedings as J-44 and the brochure as J-45."

I will read the letter which is very brief.

(Letter dated January 2, 1964 read.)

MR. FARRELL: Your Honor, at this time rather than read from the brochure and from the prior exhibit which we produced yesterday through Mr. Shippee --

THE COURT: What was the number?

MR. FARRELL: The prior exhibit, your Honor, is 215 and there was a brown covered one which is back here and that is 215. Rather than go through that and take the time to read from either of those brochures, we have

prepared an exhibit which is a blowup from the brief which we previously exhibited to you showing the comparison between these two brochures.

THE COURT: Has this blowup been shown to opposing counsel?

MR. FARRELL: No, it has not. We just got it today.

THE COURT: I think you ought to show it in advance of any offer in the presence of the jury until they have had a chance to look at it and then I will rule.

MR. FARRELL: Very well. They have a copy of the brief. It is just a blowup of the typing in the brief.

MR. MacCRATE: May I be heard at the side bar?

THE COURT: Yes.

(At the side bar.)

THE COURT: See, to avoid surprise at this type the material should be furnished in advance and either read from the pretrial order or have it listed as an exhibit.

MR. FARRELL: We didn't have it until we did the brief.

THE COURT: You have been in the case since 1967.

MR. FARRELL: But there is nothing new, this brief was submitted to defendants.

THE COURT: Is there a problem with this exhibit?

MR. MacCRATE: There is indeed. To take a small piece of paper with a sentence characterized by the witness as innocuous and just to blow them up into two columns --

THE COURT: Very well, I will have to deal with this problem separately later. It seems to me that it may be permissible and you can go to the paragraphs that are not identical and argue to the jury and I will instruct the jury that any aids like this are solely for their assistance in understanding the actual exhibit and are not in themselves evidence and when they get in the jury room if they deem it proper to do so, they should examine the two exhibits side by side.

Is this other one in evidence, this 215?

MR. FARRELL: Both are in evidence, your Honor.

THE COURT: They will have a chance to look at them and I will rule on them later.

(In open court.)

MR. FARRELL: Your Honor, I would just read the the title page of the Joint Exhibit 45.

THE COURT: I really don't think that is

necessary at this time. I will let you come back to it after I have ruled on the proposed exhibit.

MR. FARRELL: Very well, your Honor. I just wanted to make clear the source of it.

THE COURT: I understand.

MR. FARRELL: Continuing with the stipulation:

"(49) Following the presentation to officials of EDA and PRIDCO in Puerto Rico by Phillips personnel in January 1964, the officials of EDA made various suggestions for the manner in which the proposal might be presented to the U. S. Interior Department.

"J. Submissions to the Interior Department by EDA and Phillips: January-June 1964.

"(50) Rafael Durand, under date of January 14, 1964 sent a telegram to Secretary of the Interior Udall which telegram has been marked at pretrial proceedings as J-46.

"On January 15, 1964, Chapman and his law firm filed a petition for allocation of unfinished oil - Puerto Rico on behalf of Phillips with the Oil Import Appeals Board which petition has been marked at pretrial proceedings as J-47."

Your Honor, I do not at this time need to read

this.

"(52) On January 28, 1964, Rafael Durand sent a letter to Secretary Udall which letter has been marked at pretrial proceedings as J-48."

I will not read that at this time.

"(53) Chapman and his law firm submitted to the Oil Import Appeals Board in May 1964 a brief entitled 'Brief in Support of Petition for Allocation of Unfinished Oils - Puerto Rico' which has been marked at pretrial proceedings as J-49."

Now, I will read from that only two paragraphs and I am reading from page 5 under the Roman numeral II in the center of the page.

"Grounds for petition."

(Exhibit read in part.)

MR. MacCRATE: I would like to read the second and third paragraphs.

THE COURT: If Mr. Farrell has finished reading.

MR. FARRELL: Yes, I am finished.

(Second and third paragraphs read.)

MR. FARRELL: Continuing with the stipulation, 54:

"On May 1, 1964 Chapman and his law firm submitted to the Oil Import Administrator, Cordell Moore,

a letter with accompanying memorandum entitled 'Memorandum in support of request for recommendation for increase in maximum level of imports of unfinished oils - Puerto Rico". A copy of the brochure marked as Joint Exhibit 50 and of the 'Brief in support of petition for allocation of unfinished oils - Puerto Rico' marked as Joint Exhibit 51 were also submitted with the letter."

Those are already in evidence, your Honor, and I will not at this time read them.

(Pause.)

(Continued on next page.)

MR. FARRELL: The letter dated May 1, 1964 and the accompanying memorandum have been marked at pretrial proceedings as Exhibit J-51 and J-51A. Under date of June 19, 1964, EDA Administrator --

MR. MacCRATE: Excuse me, Mr. Farrell, let me suggest two numbers 51. I believe the reference on the seventh line of page 21 of the stipulations is to J-49, which you will see referred to on the preceding page, four lines from the bottom.

MR. FARRELL: Right. They were marked.

MR. MacCRATE: So that is 49, and you are correct, this one is 51.

MR. FARRELL: Right. The exhibit was marked twice.

THE COURT: All right.

MR. FARRELL: To continue:

The letter dated May 1, 1964 and the accompanying memorandum have been marked at pretrial proceedings as exhibits identified by Chapman in response to defendant's question number 46. Under date of June 19, 1964, EDA Administrator Rafael Durand sent a letter to Assistant Secretary John M. Kelly of the Department of the Interior which letter has been marked as pretrial proceedings as Joint Exhibit 52.

Q Now, Mr. Shippee, during the period which was covered by the stipulation, that is up until June, 1964, did you and Mr. Young and Mr. Willey continue to work on the petrochemical project?

MR. MacCRATE: May I have that question, please?

(Question read.)

MR. MacCRATE: Objection, your Honor, unless it is directed to a particular action.

THE COURT: I will sustain the objection.

Q What did you do, Mr. Shippee, if anything?

A I contacted various chemical companies, including the ones that we had talked to at the beginning, which was Hercules, Monsanto, Allied Chemical, and others, to see if they would include in their forward planning additional plants in Puerto Rico.

I also --

MR. MacCRATE: Your Honor, can we fix the time of this particular action?

THE COURT: He's taking this during the period, as I understand it --

A Between August and December of 1963.

THE COURT: Oh, but they're asking you about '64 in the question.

Q I was asking you about '64 --

THE COUPT: Frame a new question.

MR. FARRELL: I want to keep it chronological.

THE COURT: I will strike out the prior answer. The jury will disregard it.

MR. FARRELL: Fine.

Q Just let me ask you, Mr. Shippee, during the month of December '63, did you speak with Mr. Coan concerning the proposed petrochemical project?

A Yes.

Q What did Mr. Coan say?

A Mr. Coan said that he was --

MR. MacCRATE: I object, your Honor.

THE COURT: I will sustain the objection.

MR. FARRELL: Your Honor --

THE COURT: No argument in front of the jury.

MR. FARRELL: I'm sorry.

THE COURT: Just he and Mr. Coan talking?

MR. FARRELL: He and Mr. Coan.

THE COURT: He may say he had a conversation with Mr. Coan concerning the project, but not what was said.

MR. FARRELL: May I approach the bench?

THE COURT: Not now. Let's get along with

this case. When we get a recess we'll talk about Mr. Coan.

MR. FARRELL: I now offer Plaintiff's Exhibit 138 which was previously Plaintiff's 197.

MR. MacCRATE: I have my continuing objection, your Honor.

THE COURT: Yes. Certainly. Same ruling. I will take it subject to connection.

(Exhibit P-138 was received in evidence.)

MR. FARRELL: Now, your Honor, I will read this to the jury. It is very brief:

(Mr. Farrell read to the jury from Exhibit P-138 in evidence.)

Q Now, turning your attention to the period from January to June 1964, and be as precise as you can with the dates, tell me what you did with respect to the proposed project, Mr. Shippee.

A In January I investigated a PVO project which Prudential Oil would consider to sponsor as a candidate satellite chemical plant.

Q What is PVC?

MR. MacCRATE: I object, your Honor.

THE COURT: I will overrule the objection.

MR. MacCRATE: This is a question of an

investigation without indicating what it means --

THE COURT: You may cross examine what he saw, what he did, where he went.

A I prepared a memorandum for our board of directors, and we prepared an outline of the plant. We incorporated a polymer company in Puerto Rico.

Q What is a polymer company?

A That is a chemical plant to take a feedstock from a petrochemical refinery. And we generally prepared for participation as a satellite chemical company ourselves.

By the end of that year, in December, we had prepared a two-page outline --

Q Hold it. You're going too fast. We are talking about the period up to June 1964.

A I was taking one incident up to the conclusion.

THE COURT: Don't argue with the examiner. Let Mr. Farrell frame the next question.

Q Let's try to keep the frame of reference because I want to keep it chronological.

Anything else up to June, 1964, just tell us about that.

A Yes. I met with Mr. Young who had visited with --

MR. MacCRATE: My objection is to what Mr. Young had done.

THE COURT: I will permit him to say he met Mr. Young.

A -- Mr. Young, who told me --

MR. MacCRATE: I object.

THE COURT: Objection to hearsay. The witness may testify that he met him.

A I met with Mr. Young, I met with Mr. Willey. I myself met with chemical companies, including Hercules and Monsanto and Allied Chemical.

Q What was your purpose in those meetings, Mr. Shippee?

MR. MacCRATE: Objection, your Honor.

THE COURT: Well, he may testify as to generally what he asked those companies to do. Cross examination may be had as to who he saw there, and what they told him.

A I asked these chemical companies if they had a continuing interest in coming to Puerto Rico once the core plant was onstream, and --

THE COURT: All right, that's enough.

MR. FARRELL: Mr. MacCrate, I now intend to offer Plaintiff's Exhibit 147 for identification, and that

prior number if 44N, and it is dated May 14, 1963.

THE COURT: I think at this time I will excuse the jury. The jury may withdraw to the jury room for a brief recess. You may step down if you'd like, Mr. Shippee.

(Jury left the courtroom.)

THE COURT: Exhibit 147 for identification?

MR. MacCRATE: Yes, your Honor. This is a carbon copy from Mr. Shippee's file of a letter that he says he sent to Oscar Chapman. It will be noted that there is a "cc" and that there is a "bc."

THE COURT: Yes.

MR. MacCRATE: I would object to the letter being received as hearsay, in any event, but if your Honor should take it on the basis that Mr. Oscar Chapman was in May 1964 an attorney for Phillips, I would still point out that on the copy that would have gone presumably to Mr. Chapman there would be no indication of the blind carbons going to Mr. Coan and to Mr. Young.

THE COURT: I don't see the signficance of that. This witness could testify that he sent a letter to Chapman. I suppose if it's relevant to the case, he could say that he gave a live copy of it to Mr. Anderson and blind copies to Messrs. Young and Coan. That is not unusual in

these matters.

The puzzling thing about this letter is that from reading it an inference can be drawn that until he read it in the paper, this witness didn't even know they had filed with the Department of Interior. The news article attached to it says that they proposed, that Phillips proposed its plants in Puerto Rico, and suggests that they file a petition with the Oil Import Appeals Board, presumably on the 12th of May, 1964.

MR. MacCRATE: My basic objection, your Honor, is one of hearsay.

THE COURT: Well, I don't know that that is a valid objection. It is not quite clear to me what the relevance of it is.

MR. FARRELL: Well, your Honor, I will follow it up. I will say, it states here, "I should say that congratulations are in order" --

THE COURT: You don't have to read it. I can read that.

MR. FARRELL: I understand that, but it is quite clear that Mr. Shippee is referring to the project as "our project." I am going to ask him if anyone said "buzz off."

THE COURT: "It is our project and I don't

even know he filed until the Wall Street Journal" --

MR. FARRELL: That doesn't indicate he knows they filed. There was an item in the Wall Street Journal --

THE COURT: I will overrule the objection. I suppose I should instruct the jury that the news article attached cannot be considered by them as anything except to show the fact that there was such an article in the papers, and it is not evidence of the truth of what the papers reported.

MR. FARRELL: That is satisfactory. It is attached because it was attached in the file.

THE COURT: I understand. We will be in recess, gentlemen.

By the way, while we're here, what about these charts? Will you look at them during the recess, Mr. MacCrate?

We'll be in recess, gentlemen.

(Recess.)

MR. MacCRATE: Your Honor, defendant strenuously objects to the receipt in evidence of charts of this character. It is not evidence; it is an argument that is being made, and to take particular paragraphs and to blow them up in this fashion of material that is in evidence is sipmly a matter of argument. It is not adding

anything to the record of this case.

Now, if there is an argument to be made, that argument is made by counsel. But counsel's argument should not be regarded as evidence in the case.

THE COURT: Well, you see, you have two complex documents here, and it probably is reasonable to set the two down together and contrast them. The difficulty I have with these exhibits is partly one of their size. They are not large enough to constitute charts. A person has to be about three feet away from them in order to read them. And I don't like to take an exhibit which in a different type of case might be characterized as inflamatory --

MR. MacCRATE: It is.

THE COURT: But I think it is permissible for counsel to direct the attention of the jury to similarities, and state his contention very briefly to the jury that "We contend that these paragraphs in the Phillips brochure of January 1964 were lifted bodily from the Prudential draft brochure," which the testimony suggests that Phillips had duplicated at the request of Prudential in June of 1963.

I think that issue can be tendered to the jury, and that these exhibits are as good a way as any.

MR. MacCRATE: But, your Honor, it is one thing

to use them as aids in argument. It is quite a different thing to mark them in evidence and make them something that is a part of the record in this case as evidence, and I believe that it is taking out of voluminous documents, out of a great deal of material, a few isolated phrases and paragraphs, and holding them up out of all dimension to how they appear in this particular document.

THE COURT: You know, if this were a copyright infringement case and plagarism was charged, there wouldn't be too much trouble with this exhibit, because some of the language is literally lifted, word for word, particularly that first one on page 1.

MR. MacCRATE: There are two or three sentences, your Honor, that are the same, and those sentences--

THE COURT: They don't get that way unless the person who did the second document in point of time was copying, and the jury can infer that they were copying from the Prudential brochure. What the legal results are that flow from that is an entirely different question.

MR. MacCRATE: And Mr. Coan's involvement in the whole thing makes all of it most reasonable, it is the contention of the defendants, and furthermore, they completely--

THE COURT: Would your objection be obviated if he took it in normal size?

MR. MacCRATE: It would not be, to my mind, as outrageous a bit of evidence.

THE COURT: I don't think it is outrageous. I will take these with a limiting instruction. Just the nature of a chart to illustrate a contention. I will point out to the jury that the chart is not evidence in itself, it is merely permitted to allow them to understand the underlying exhibit and give the numbers of them again -- J-45 and Plaintiff 215 -- and that is all that they are for and that the jury must also consider there are many paragraphs which are not copied.

I will tell them that. All right, you may have an exception to this proceeding.

MR. MacCRATE: I take an exception.

THE COURT: I don't want them waved around here as if this were a personal injury case.

MR. FARRELL: That was the farthest thing from my mind.

THE COURT: All right.

MR. FARRELL: I just want to relieve you of having them on the bench here.

(Plaintiff's Exhibits 224-A through D were received in evidence.)

(Jury present.)

THE COURT: Members of the jury, at this time I am receiving in evidence Plaintiff's Exhibit 224-A, B, C and D which are photographic blowups of a typewritten comparison which the attorney for the plaintiff here has made between Exhibit J-45 which was brochure of January 1964 filed by the Chapman law office in behalf of Phillips Petroleum Company and Exhibit Plaintiff's 215 which was a June 1963 brochure which was prepared by Prudential with respect to which Mr. Shippee testified yesterday.

In admitting these documents into evidence I want to call your attention to a very careful cautionary instruction concerning their use.

These particular charts are illustrative only. They are being permitted in to facilitate a comparison by you of certain paragraphs of the two different documents in evidence which the plaintiff considers to be relevant in this case.

It is not a substitute for your actual comparison of the entire documents. It must be obvious to you that there are probably paragraphs which are not the same or paragraphs which are different. But the plaintiff contends and it is a matter for your consideration as to whether the particular paragraphs were in fact copied directly from one document which was prior in time into the

latter document.

But these are only aids. The evidence in the case is the actual underlying exhibit, J-45 and P-215.

You can use and consider these Exhibits 224-A, B, C and D solely as aids in permitting or assisting you to compare those parts of these two booklets which the plaintiff contends are substantially the same.

MR. FARRELL: Thank you, your Honor.

I will just state to the jury the Prudential brochure of June 1963 refers to Exhibit 215 which is the one Mr. Shippee testified about yesterday.

The Phillips brochure of January 1964 refers to Joint Exhibit 45 and those are the text on the right-hand side of the page.

I will not now read these to you but you will have them available and at some point I will perhaps read parts and they will be available to you.

THE COURT: Let's put them away for the time being.

I will also overrule the objection as to Exhibit 147 and it may be received in evidence.

(Plaintiff's Exhibit 147 for identification was received in evidence.)

THE COURT: To complete the record you ought to

ask whether he did mail the original of Plaintiff's 147 and to whom copies were sent.

MR. FARRELL: yes, I will.

BY MR. FARRELL:

Q Mr. Shippee, I show you Plaintiff's Exhibit 147 in evidence and ask you whether you sent the original of that document to Mr. Chapman?

A I did.

Q Did you send it on or about the date it bears, May 14, 1964?

A Yes.

Q Did you send a copy of that letter to Mr. Robert Anderson?

A Yes.

Q Again, at or about May 14, 1964?

A Yes, sir.

Q On or about that date did you also send carbon copies to Mr. Coan and Mr. Young?

A Yes.

MR. MacCRATE: I did not mean to waive the voir dire with respect to the attachment to that.

THE COURT: As to the attachment, certainly.

You may have a voir dire as to the attachment and also establish the meaning of the letters "BC" if you

care to do so.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, on the first page of the letter down in the lower left-hand corner appear the letters "cc" and the name Mr. Robert B. Anderderson and the letters "bc: Mr. J. Coan and Mr. T. R. Young."

What do these notations mean on that letter?

A The original shows only a copy to Mr. Robert B. Anderson and the copy showed a blind copy to Mr. Coan and to Mr. Young.

Q On the copy that you sent to Mr. Chapman you did not show that you were sending copies to Mr. Coan and Mr. Young?

A Correct.

Q On the news clipping there is a notation in the left-hand margin of that clipping from the Wall Street Journal, Wednesday, May 13, 1964.

Whose handwriting is that?

A Mine.

Q Would you read your notation, the first of the two notations?

THE COURT: Excuse me.

First, was this notation on the copy of the

clipping sent to Mr. Chapman?

THE WITNESS: Yes, it was.

THE COURT: To Mr. Anderson?

THE WITNESS: All the copies, yes, it was.

THE COURT: All right.

A I underlined the words "to import 50,000 barrels a day" and made an arrow in the margin "The project is taking form."

I underlined the other words, namely, "About $45 million" in three phrases and I also underlined "Commonwealth need for core chemical industry" and wrote with an arrow "Very good."

I underlined the words "Amount of core industry output for economic growth of Puerto Rico" and I used this letter as a device --

Q You answered my question.

THE COURT: You wrote it on all the copies, is that correct?

THE WITNESS: Yes, I did.

THE COURT: All right.

Members of the jury, at this time I will tell you that this newspaper is not evidence of the truth of the facts stated therein. The newspaper clipping is only evidence of the fact that that article did in fact

appear in the Wall Street Journal on Wednesday, May 13, 1964.

But a newspaper article is not evidence of the truth of the contents of the article.

MR. FARRELL: I will read this on the letterhead of Prudential Oil Corporation, May 14, 1964.

(Exhibit read.)

MR. FARRELL: I will now offer, Mr. MacCrate, Plaintiff's Exhibit 148 for identification which was previously marked Plaintiff's 203.

MR. MacCRATE: Objection, your Honor. No connection to Phillips.

THE COURT: I will take it subject to connection.

MR. MacCRATE: Your Honor, you notice it is a blind carbon?

THE COURT: He will have to show it if it is disputed whether that was sent.

MR. FARRELL: I will ask him.

Q Mr. Shippee, I show you a copy of Exhibit 148 and ask you whether you sent the original of this on or about June 4, 1964 to Mr. Diaz-Herrandez?

A Yes, I did.

Q Did you at that time send carbon copies to Mr. Anderson, a carbon copy to Mr. Anderson?

A Yes.

Q To Mr. Chapman?

A Yes, I did.

Q Mr. Coan?

A Yes.

Q Mr. Young?

A Yes.

THE COURT: Anything else, Mr. MacCrate?

MR. MacCRATE: No, your Honor.

THE COURT: I will overrule the objection.

(Plaintiff's Exhibit 148 for identification was received in evidence.)

MR. FARRELL: I will read the letter.

(Exhibit read.)

Q Mr. Shippee, in or about June 1964 did you have a conversation with Mr. Coan?

A Yes.

Q Can you tell me what that conversation was about?

A Can you refresh my recollection?

Q Don't you recall it?

THE COURT: Don't argue with the witness, please.

MR. FARRELL: I will show you Plaintiff's Exhibit 149 for identification and ask whether that refreshes his

recollection.

MR. MacCRATE: May I see it first, please?

THE COURT: Don't you have a copy of 149?

The question is whether looking at 149 refreshes your recollection.

THE WITNESS: Yes, sir, it does.

THE COURT: All right.

Q Can you tell us the conversation?

A Yes. Mr. Coan had telephoned me in June of 1964 that a change was coming up in the regulations and that Mr. Learned was talking with Mr. Chapman regarding it.

Q Anything else? Do you recall anything else?

A Yes.

Q Do you need this?

A I would like to look at it again, please.

(Handed to witness.)

A It also concerned Warburg having raised their services or offered their services again should any public financing be needed.

Q Do you remember anything else about the conversation?

A That was the substance of it. That was that we had earlier expected the change coming up to the import

regulations in Washington.

Q Did you report that to Mr. Anderson, that conversation?

A Yes, I discussed it with him.

Q Mr. Shippee, I call your attention to the last paragraph. Did you discuss it directly with Mr. Anderson or his secretary?

A The memo refreshes my recollection that I spoke to his secretary in that Anderson was home sick and the secretary took the message.

Q Mr. Shippee, did you in or about July 1964 speak with Mr. Coan in connection with hearings on the Phillips application before the Oil Import Quota Board?

A Yes, I did.

Q At that time what did Mr. Coan say to you?

A Mr. Coan told me that Mr. Durand was coming to Washington to participate at the hearings and wanted to have an opportunity of speaking with Secretary Anderson.

Q Who wanted this opportunity?

A Mr. Durand wanted to speak with Secretary Anderson.

Q Did you advise Mr. Anderson of that?

A Yes, I did.

MR. FARRELL: Now, I offer Plaintiff's Exhibit

151 which was previously P-200.

MR. MacCRATE: Subject to the continuing objection, your Honor.

THE COURT: All right, received subject to connection.

(Plaintiff's Exhibit 151 for identification was received in evidence.)

MR. FARRELL: I will read this to the jury.

(Exhibit read.)

MR. FARRELL: I have now reached the chronological next point in the stipulation, K.

"The hearing in July 1964 before the Oil Import Appeals Board on the Phillips application and the supplementary submissions.

"(55) The Phillips' application for an import license created serious controversy in the oil industry, with competing oil companies opposing the granting to Phillips of the import authorization essential for the Puerto Rican project to go forward. On July 31, 1964, a public hearing on the application of Phillips for an oil import authorization for Puerto Rico was held before the Oil Import Administration of the Department of the Interior, at which EDA supported the Phillips'

application and various representatives of other oil companies and oil industry groups appeared in opposition.

"(56) At the hearing on July 31, 1964, testifying in support of the Phillips application, were EDA Administrator Rafael Durand, accompanied by Amadeo I.D. Francis and Sam Van Hyning"

and that is marked as Joint 53-A.

Stanley Learned, president and chief executive officer of Phillips and that part of the transcript is marked as Joint 53-B.

"Roy M. Waldby, manager, petroleum projects development of Phillips"

and that is marked as Joint 53-C.

"Carl M. Kron, manager marketing research for elastomers, fertilizers and chemicals for Phillips"

and that transcript is marked as J-53-D.

"And W. W. Keeler, chairman of the executive committee of Phillips"

and that transcript is marked as pages 55-76.

"Phillips presented five exhibits in support of its presentation which have been marked at pre-trial proceedings as Joint Exhibit 54."

"(57) At the hearing on July 31, 1964, testifying in general opposition to the Phillips' application for an oil import license were the following representatives of other oil companies and the oil industry: M. A. Wright" --

THE COURT: Is the number of companies important?

MR. FARRELL: I will just read the companies.

The following companies testified in opposition to the Phillips' application:

Standard Oil Company New Jersey, Tropical Gas Company, Inc., Atlantic Refining Company, Hess Oil & Chemical Corporation, Commonwealth Oil Refining Company, Compania Petrolera de Puerto Rico, Inc., St. Clair Refining Company, Texaco, Inc., Gulf Oil Corporation, Globe Oil Company Virgin Ilsands, Inc., Standard Oil Company of Indiana, Socony Mobil Oil Company, Inc., Independent Petroleum Association of America, Tidewater Oil Company.

"(58) In August 1964, following the public hearing conducted by the Oil Import Administration of the Department of the Interior, EDA and Phillips submitted supplemental statements in support of Phillips' application for an oil import allocation dated respectively August 24, 1964 and August 26,

1964 which have been marked at pretrial proceedings as Joint Exhibits 56 and 57."

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to the latter part of 1964, that is after the hearings August on, did you continue to work with respect to the petrochemical project?

A Yes.

Q Tell us what you did and be as precise as you can?

A Well, we actively pursued -- Prudential Oil Corporation actively pursued --

MR. MacCRATE: Your Honor, it has to be what this individual did.

THE COURT: I understand that.

A I prepared a proposal and submitted it to the board of directors of Prudential Oil Corporation, a proposal to establish a company in Puerto Rico and the board gave their approval and I prepared a memorandum and arranged to visit Bartlesville to discuss it with Phillips Petroleum as a candidate satellite plant for Puerto Rico.

I also pursued my earlier conversations with Hercules, with Monsanto and Allied Chemical. I received reports from Mr. Young and Mr. Willey of their activities.

MR. FARRELL: Mr. MacCrate, I am now going to offer Plaintiff's Exhibit 153 which was previously Defendant's 530 dated 9/21/64.

(Continued on next page.)

MR. MacCRATE: Objection, your Honor.

THE COURT: I will take that up at the next recess. I am inclined to think that the objection would have to be sustained. But I will hear you on it in the absence of the jury later on.

BY MR. FARRELL:

Q Now, Mr. Shippee, did you go to Bartlesville, Oklahoma and meet with Mr. Learned?

A I did.

Q When was that?

A In January of 1965.

Q Tell me how that meeting came about?

A I requested Mr. William Wright, who was Mr. Anderson's partner here in New York City, in Rockefeller Plaza, to arrange ameeting for Mr. Willey and for me to visit Mr. Learned at Bartlesville. He arranged the meeting.

Q Who is he?

A Mr. Wright arranged the meeting, and we went together with Mr. Wright early in January.

Q Can you tell us who was at that meeting?

A Mr. Wright, Mr. Willey and myself were at all the meetings, but we had three separate meetings. We had a meeting with the head of production of Phillips.

Q Who was that if you know?

A I do not recall his name. We had a meeting with Mr. Learned, and we also met with Mr. Keeler. The principal meeting was with Mr. Learned.

Q Turning your attention to the meeting with Mr. Learned, where did that take place?

A In the headquarters of Phillips Petroleum in Bartlesville, in Mr. Learned's office.

Q Do you know the date of the meeting?

A Approximately January 8th or between the 5th and the 10th, in that area.

Q Can you tell me at the meeting who was present at the meeting with Mr. Learned?

A Mr. Willey, Mr. Wright and myself.

Q Can you tell me what was said at the meeting, and tell the substance of what was said, and who said it?

A I said most of the conversation. I had brought with me financial information about Prudential Funds, and I had also brought a proposal for a chemical plant in Puerto Rico and I asked Mr. Learned to study our memorandum and tell us how Phillips could support our establishing a satellite plant within the context of the undertaking to the Puerto Rican government for plowing back profits and for attracting satellite plants.

I reviewed the financial position of Prudential

Funds and pointed out our requirements in order to undertake the large scale financing of some kind of support, and Mr. Learned told me that he would study it and would let us know.

Q Did Mr. Learned say anything else?

A We exchanged pleasantries and congratulations about the progress of the project, but I had restricted this meeting to a business subject and that was understood when the meeting was made, namely this satellite plant.

Q I show you Plaintiff's Exhibit -- you mentioned in your prior answer about a memorandum you showed Mr. Learned?

A Yes.

Q I show you Plaintiff's Exhibit 158 for identification and ask if that is a copy of the memorandum you showed Mr. Learned.

A Yes, that is a copy of the memorandum I took and gave to Mr. Learned.

MR. FARRELL: I offer that, your Honor. The prior number -- the date was January '65. The prior number was D-90.

MR. MacCRATE: I believe this was an enclosure to another document. Are you offering the document to which that was an enclosure?

MR. FARRELL: No, I'm not, although I'd be glad to offer it if you would tell me what document it was that it was enclosed with.

MR. MacCRATE: PX 79. That is the old number.

MR. FARRELL: Do you have the date? The date would help us find it right away.

MR. MacCRATE: Rather than take up the time, I will reserve to connect at a later time.

THE COURT: All right, Exhibit 158 will be received without objection with the understanding that wehn the covering letter or letter that went with it is produced, that may also be received.

MR. FARRELL: That's satisfactory, your Honor.

(Exhibit P-158 was received in evidence.)

Q Mr. Shippee, thereafter -- I'm talking in the period following your meeting with Mr. Learned, did you meet with other -- well, let me finish with that date.

Going back to the day that you met with Mr. Learned, you met with other Phillips officers, is that correct?

A Yes, I did.

Q And you told us who they were?

A Yes.

Q Was Mr. Adams one of them?

A No.

Q Who were they?

A Mr. Keeler, the vice president in charge of production, and vice president in charge of oil transport.

THE COURT: Three different people?

THE WITNESS: Three different people.

Q Can you tell us the content of -- where did the conversation with Mr. Keeler take place?

A In the corridors of the executive offices.

Q Was that a very long meeting?

A No. It was an introduction meeting.

Q How about your conversation with the other gentleman in charge of transportation?

A Mr. Wright had an oil transport company and so we were spectators at his conversation with the vice president of oil transport. Our Prudential Drilling Funds were doing drilling with Phillips' subsidiaries in Canada, and I met the production vice president in regard to that.

THE COURT: Let's try to restrict the testimony to Puerto Rico, if you will.

Q Was there any talk about the Puerto Rico project?

A That was with Mr. Learned.

Q In other words, there was no conversation with this transportation man?

A No, there was not.

Q Subsequent to the meetings that you have just described, did you meet with Mr. Waldby?

A Yes.

Q When about was that meeting?

A I'd like to be refreshed, if you can help me.

Q Let me show you Plaintiff's Exhibit 168 --

THE COURT: Is there any doubt about whether he met with Mr. Waldby, Mr. MacCrate? If not, let's just state the date for the record and let's move along with this trial. It is getting a little too slow.

Do you concede, Mr. MacCrate, that he met with Mr. Waldby at a particular time?

MR. MacCRATE: If I could have the date identified, your Honor, I believe I can concede it.

THE COURT: Isn't there an exhibit that will tell us that?

MR. FARRELL: Yes, there is.

THE COURT: Let's go .

MR. MacCRATE: What is the date, Mr. Farrell?

MR. FARRELL: February 8th.

THE COURT: All right. February 8, 1965. Frame the next question. The witness here met with Mr. Waldby.

Q And who was Mr. Waldby, what was his position at that time?

A Mr. Waldby was an officer of Phillips Petroleum, and he was designated for the core plant in Puerto Rico.

Q What did you discuss with Mr. Waldby?

A The construction schedule, the plans for bringing it onstream, when we could expect to have chemical feedstocks for the satellite plants.

MR. FARRELL: Your Honor, I offer Plaintiff's Exhibit 168.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, Plaintiff's Exhibit 168 for identification indicates "Copy to R. B. Anderson, N. Shippee, E. J. Willey and W.B. Wright."

Did you send a copy of this document to yourself?

A Yes. Whenever I addressed a memorandum to file, I also had a copy put on my desk. I signed this NMS, with my initials.

Q And it was just to these four individuals, is that correct, that you sent a copy of this memorandum?

A No. A copy to file also went to the main files and it would have gone to interested people within the company, but we were shown as copies.

Q No copy of this went to Phillips, did it?

A Not from any recollection I have, and it doesn't appear on the face.

MR. MacCRATE: Your Honor, I renew my objection. This is to the group of Anderson, Shippee, Willey and --

THE COURT: I understand. And I am prepared to sustain the objection. I will permit this witness to testify, as he already has been asked, about his conversation with Mr. Waldby in Bartlesville on February 8, 1965, and if he can't remember what he said, he may have reference to Exhibit 168 for identification to refresh his recollection.

First, however, his recollection has to be exhausted by questions.

Q Well, do you remember anything other than what you testified about about the meeting with Mr. Waldby?

A Could you refresh my recollection?

In addition to describing what I previously

stated, Mr. Waldby stated that Phillips would welcome partners and suggested that the immediate area of need is a 50,000,000 pound plant to make anhydride from orthoxylene.

THE COURT: And what if anything did you tell Mr. Waldby?

THE WITNESS: I told Mr. Waldby that we would like to pursue it under the most favorable conditions as to purchase price we could obtain from Phillips. I told Mr. Waldby that we had good access to marketing information, and this did represent a potential which we have the capability to perform.

MR. FARRELL: Mr. MacCrate, I will now offer Plaintiff's Exhibit 165 for identification, which was previously E188, dated 1/14/65.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-165 was received in evidence.)

MR. FARRELL: Now, Mr. MacCrate, I offer Plaintiff's Exhibit 169, which is previously E44W, 2/16/65

MR. MacCRATE: May I inquire of the witness?

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, referring to Plaintiff's Exhibit 169 for identification, in the lower lefthand corner of

your letter to Mr. Learned appears the notation, "cc Mr. Waldby, Phillips Petroleum Company, 80 Broadway, New York, New York;" and beneath that, "bc, Messrs. R. B. Anderson, W.H. Wright." And beneath that appears, "bbc, Mr. J. Coan."

Could you explain to the jury what those notations mean?

A The "cc" is a carbon copy which showed on the original. The "bc" or blind copies are shown on the carbon copy to Mr. Anderson and Mr. Wright. The "bbc" was a blind blind copy that only showed on the file copy and a copy to Mr. Coan.

Q So that the copy that Mr. Learned received had no indication on it that a copy went to Mr. Anderson or Mr. Wright or Mr. Coan?

A No, it did not.

MR. FARRELL: I offer it, your Honor.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-169 was received in evidence.)

MR. FARRELL: And Mr. MacCrate, I now offer 170, which is dated May 17, 1965, and previously marked 44X.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, on Plaintiff's Exhibit 170 for identification, again in the lower lefthand corner appears "bcc, Mr. William Wright," and "bcc Mr. J. Coan and Mr. T. R. Young."

Now, this is a copy of a letter to Mr. Waldby, is that correct?

A Yes, it is.

Q But on his copy there was notation that copies were going to Wright, Coan and Young?

A Correct.

THE COURT: No objection?

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Exhibit P-170 was received in evidence.)

MR. FARRELL: Now, your Honor, to keep the chronology, I will bring us up to date on the stipulation.

L. The Initial Determination of the Secretary of the Interior in February 1965 and the Negotiation of the Agreement between Phillips and EDA.

(59) On February 11, 1965, Secretary of the Interior Udall issued a statement which has been marked at pretrial proceedings as Joint Exhibit 59.

(60) Following the Secretary of the Interior's announcement in February 1965, representatives of the Puerto Rican government and Phillips in February, 1965 entered into negotiations as to the definitive terms and conditions upon which Phillips would establish a project in Puerto Rico.

Now, I will read the first two paragraphs of Joint Exhibit 59, that is the double spaced part, Mr. MacCrate.

(Mr. Farrell read from Exhibit J-59 in evidence to the jury.)

MR. MacCRATE: Your Honor, I would like to read the balance of this document.

THE COURT: All right, you may read the balance of it. This is a press release by Secretary Udall, is that what you're reading?

MR. MacCRATE: Yes.

(Mr. MacCrate read from Joint Exhibit 59 in evidence to the jury.)

MR. FARRELL: Continuing, paragraph (61):

Following the Secretary of the Interior's announcement in February 1965, there were renewed protests from representatives of other oil companies and oil industry groups. Under date of March 8, 1965, EDA Administrator

Rafael Durand submitted a letter and memorandum to Secretary Udall summarizing the history of EDA's efforts to promote a third refinery in Puerto Rico, which letter and memorandum have been marked at pretrial proceedings as J-60 and J-61.

Also under date of March 8, 1965, Learned sent a letter to Assistant Secretary John M. Kelly of the Interior Department which letter has been marked at pretrial as J-62.

(62) During March, 1965, additional public hearings were held in the Interior Department with respect to the Mandatory Oil Import Program. At these hearings, opponents of the Phillips proposal recommended revisions in the import program as set forth in Appendix B to the statement of Mr. True, president of the Independent Petroleum Association of America, given on March 10, 1965, which statement has been marked at pretrial proceedings as J-63, and Appendix B to that statement as J-64.

In addition, Sam Casey, president of Commonwealth Oil Refining presented a statement which has been marked as J-65. EDA Administrator Rafael Durand submitted a supplemental statement on March 22, 1965, which has been marked as J-66, and Learned submitted a statement in a letter to Secretary Udall dated March 22, '65, which has

been marked as J-67.

(63) On March 14, 1965, the Department of the Interior released the text of a letter from Secretary Udall, dated May 11, 1965, to Governor Roberto Sanchez Vilella of Puerto Rico and Stanley Learned, president of Phillips, which release and letter have been marked J-68 and J-69.

(64) Following the Secretary of the Interior's announcement of May 14, 1965, Phillips and the Commonwealth Government completed and entered into an agreement on May 27, 1965, which has been marked at pretrial as J-70.

(65) In connection with the agreement between EDA and Phillips concerning the establishment of a core petrochemical facility in Puerto Rico, as a result of further discussions between EDA and Phillips, Durand sent a letter dated May 27, 1965 to Learned, which has been marked at pretrial proceedings as J-71. In addition, Learned sent a letter dated June 11, 1965 to Secretary of the Interior Udall, which has been marked at pretrial proceedings as J-72, in response to the Secretary's request to clarify the meaning of Phillips' commitment to limit motor fuel production of the project to a maximum of 49.6 percent of the net charge used.

Now, Mr. MacCrate, I will at this time offer Plaintiff's Exhibit 176, 177, and 178 -- no, not 178.

176, 177. June 24, '65 for the first one, July 7, '65 for the second one. They have previously been marked --

MR. MacCRATE: I have got that. No objection to P-175. Objection to P-176 as irrelevant.

THE COURT: 175 is received in evidence.

What about 176?

MR. FARRELL: No, 176 and 177. 175 hasn't been offered.

THE COURT: I'm sorry, I heard the number incorrectly.

MR. MacCRATE: No, I was in error, your Honor.

No objection to 176. As to 177 there is a notation at the bottom which did not appear apparently on the original letter to Mr. Waldby, and I would object to its receipt.

THE COURT: All right, I will eliminate the note on the bottom. I assume that presents no problem.

MR. FARRELL: No.

THE COURT: All right. Number 177 will be received as redacted.

(Exhibits P-176 and P-177 as redacted, received in evidence.)

BEST COPY AVAILABLE

Q Now, Mr. Shippee, turning your attention to the period in the summer of 1965, and beyond, didyou continue to work with respect to the petrochemical complex?

A Yes.

Q Tell me what you did and be as precise as you can. I'd like you to make it as short as possible.

THE COURT: What time period now?

MR. FARRELL: We're talking now from June, July '65 forward, your Honor.

A I worked principally on the satellite proposal of Prudential Oil Corp. for a PVC plant in Puerto Rico. We met with a so-called Kugler group, who was a trained engineer and chemist in PVC and who had worked with a PVC plant. To form the operating group we incorporated the Puerto Rico Polymer Company. And we prepared to construct a chemical company in Puerto Rico timely with the construction of the core plant, but scheduled to come after the core plant was in operation.

Q Did you meet with anyone from the Economic Development Administration?

A Yes.

Q With whom did you meet?

A I made a visit, a trip to Puerto Rico, and I met Mr. Diaz-Hernandez and others. I also met Mr. Van Hyning.

I met the bankers. I can't remember their names. I met the lawyers, Dubon & Dubon.

MR. MacCRATE: Can you fix the time?

A I would like to refresh my memory if you have something.

Q I will show you Plaintiff's Exhibit 180 and ask you if that refreshes your recollection.

A Yes, this refreshes my recollection as early in August, since I wrote to Mr. Van Hyning on August 17th, thanking him for the counsel he gave me during his visit.

Q Now, turning your attention to the fall and winter of 1965, did you work on the project, Mr. Shippee?

A Yes.

Q And tell us what you did. Again, be as brief -- be precise, but brief.

A We pursued our project --

Q Who is "we"?

A Prudential Oil Corporation, under my direction pursued the project for a PVC plant in Puerto Rico.

MR. MacCRATE: Objection, your Honor.

THE COURT: Well, I think he has already said that he was working on a PVC plant in Puerto Rico and I think it is getting repetitious and cumulative.

MR. FARRELL: I'm just showing the time, that

he's continuing to work on it.

Q Mr. Shippee, was there anything else?

A Yes. We also met with others of Phillips. I believe their name would be Getty for one and Goring or Gorman for another, in identifying other products that we might also go into, and we received from Phillips a list of products that they marketed in South American, chemical products that they marketed in South America, that we might survey in pursuit of seeking an additional plant, a second plant.

MR. FARRELL: It is my intention to offer 181.

MR. MacCRATE: I object, your Honor.

THE COURT: Well, Exhibit 181 is the objection?

MR. MacCRATE: Yes.

THE COURT: I will permit the witness to testify whether he had a meeting in mid-January of 1966. If he had that meeting as a result of a request he made of Mr. Chapman I will permit him to tell us that also. I don't think we need the letter.

If he had a meeting with Phillips, however, I will permit him to bring it out.

Q Mr. Shippee, did you have a meeting with Phillips in January 1966?

A Yes.

Q Can you tell us who was at that meeting?

A Can you refresh my memory?

THE COURT: Where was the meeting, Mr. Shippee?

THE WITNESS: I believe the meeting was in New York.

THE COURT: All right.

What are you showing him?

MR. FARRELL: For the record I am showing him Plaintiff's Exhibit 187 for identification.

A This meeting was in the latter part of January,

January 27, in New York. Mr. Johnstone and Mr. Bethea visited Prudential, in our office --

MR. McCRATE: I object to the witness reading from the document, your Honor.

THE COURT: He may refer to the document to refresh his recollection as to who was present and --

A It was at our office in New York, in Rockefeller Plaza and besides myself was Mr. Willey, Mr. Wright and Mr. Young.

Q Tell us who said what and be as precise as you can and rest on your recollection as best you can?

A The conversation was about the satellite plants that we had been pursuing and the support that we were looking for from Phillips.

We were relying upon Phillips to give us either contract support or other help and also upon the requirement in the project application that profits would be plowed back into supporting satellite plants.

We felt that if anyone deserved the opportunity for having access to the profits that had to be plowed back, we certainly should be at least equal among others and we represented we wanted something concrete from Phillips now so that we could get on with our plans.

Q Did you tell them that you had an interest in

the core complex?

A Not that I recall.

Q Do you recall what Mr. Johnstone said?

A As I recall at that time I was satisfied that Mr. Johnstone --

THE COURT: What did he say?

A Mr. Johnstone told me he would go back to Bartlesville with a better understanding and that he would take up our message with the higher officials in Bartlesville.

Q Is that all you can remember about the meeting?

A Without refreshing my recollection that is all I remember now.

Q Do you want to refresh your recollection?

A I would like to look again.

(Document handed to witness.)

A Mr. Johnstone told me the request was more of a financial policy question than it was of operations and that the question of plowing back profits would have to be decided when the profits were made but that he would take it up with the other officials in Bartlesville and we will hear further at a later time.

Q Did Mr. Johnstone say that Phillips did not recognize any contribution by Prudential to the origination

of the core plan?

A No, that question did not come up at that meeting.

Q Let me show you Plaintiff's Exhibit 190 and ask you whether this refreshes your recollection?

A That is dated February 16. This was another meeting.

Q Tell us when was the second meeting, Mr. Shippee?

A The second meeting --

MR. MacCRATE: May the record show that the witness is now consultin two documents together.

THE COURT: Is he? If so the record will so indicate, 190 and 187.

A It is my recollection that the next meeting took place on February 16. The date of this letter to Mr. Anderson --

Q That is Exhibit 190, the date of that?

A Yes.

Q Tell us what happened at that meeting and tell us first where it was?

A The meeting was in my office in New York City and Mr. Johnstone returned. He told the --

Q Anyone else present?

A I don't recall.

Q Do you recall what time of day it was?

A Yes, it was in the forenoon.

Q Now, what did Mr. Johnstone say to you and what did you say to him?

A Mr. Johnstone told me that Phillips did not recognize any part of Prudential in the project and could offer no support.

Q What did you say to Mr. Johnstone?

A I told Mr. Johnston that there would be no further conversation about any of our plans for the satellite plants in view of that statement and that I would have to get a hold of Mr. Anderson to understand what he just told me.

MR. FARRELL: Your Honor, this has brought us to February of 1966. I am going to read again from the stipulation to bring us up to date.

"M. The continuing opposition and the amendment in December 1965 of the oil import Proclamation.

"(66) Opposition from representatives of other companies and oil industry groups continued after the May 14, 1965 announcement of the Secretary of the Interior. On June 18, 1965, the Secretary made an announcement which has been marked at pre-trial proceedings as Joint Exhibit 73. Following

this announcement, the Governor of Puerto Rico, Roberto Sanchez Vilella, spoke to Secretary Udall by telephone and sent a letter to the Secretary dated June 29, 1965, which has been marked at pretrial proceedings as J-76.

"On July 2, 1965 the office of the Secretary of the Interior announced the establishment of an inter-agency committee to review proposed modifications of the Mandatory Oil Import Program established by Presidential Proclamation 3279, which announcement has been marked at pretrial proceedings as J-76.

"While the Phillips' application for an oil import application and other amendments of the Mandatory Oil Import Program were being considered by the special cabinet committee, FDA Administrator Rafael Durand, on August 8, 1965, issued a statement which has been marked at pretrial proceedings as J-76.

"Learned sent a letter dawted November 12, 1965 to Cordell Moore, Administrator of the Oil Import Administration, which letter has been marked at pretrial proceedings as J-77.

"On November 10, 1965 FDA Administrator Durand met in Washington with Lee White, special counsel to

the President. Governor Sanchez of Puerto Rico sent a letter dated November 13, 1965, to President Johnson which has been marked at pretrial proceedings as Exhibit J-79. On December 4, 1965 Durand again wrote to White. This letter has been marked at pretrial proceedings as J -81.

"By proclamation dated December 10, 1965 President Johnson amended the Mandatory Oil Import Program (As established by Presidential Proclamation 3279), providing, inter alia, that the Secretary of the Interior may grant, in instances in which the Secretary determines that such action would not impair the accomplishment of the objectives of the proclamation, 'Allocation of imports of crude oil and unfinished oils into Puerto Rico to persons as feedstocks for facilities which in the judgment of the Secretary will promote substantial expansion of employment in Puerto Rico through industrial development.' The proclamation modifying Proclamation 3279 has been marked at pretrial proceedings as J-81. In a related announcement which has been marked a pretrial proceedings as J-82 the Department of the Interior noted that the December 10, 1965 proclamation of the President

was based on the 'Unanimous recommendation of the Department of the Interior and all other interested federal departments and agencies.

"On December 21, 1965, the Secretary of the Interior issued amendments to Oil Import Regulation 1, effective January 1, 1966 which have been marked at pretrial proceedings as J-83.

"On December 23, 1965, Secretary of the Interior Udall issued an order which has been marked at pretrial proceedings as J-84. On April 18,1973, Presidential Proclamation 4210 was issued, effective May 1, 1973, modifying Proclamation 3279.

"N. Events in 1966 and 1967.

"In January 1966, Phillips Puerto Rico Core Inc. (Core) was incorporated under the laws of Delaware. In March, 1966, the capital stock of Core was distributed 75 per cent to Phillips, 25 per cent to PRIDCO. In 1970, Phillips purchased from PRIDCO 25 per cent of the capital stock of Core they owned by PRIDCO. On March 14, 1966 a contract was engered into between Phillips, PRIDCO and EDA which has been marked at pretrial proceedings as J-85.

"Jack P. Coan died on March 27, 1966.

"On September 27, 1967 the complaint in the present action by Prudential New York against Phillips was filed in the United States District Court for the Southern District of New York."

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to your conversation with Mr. Johnstone by which you just testified, what did you do as a result of that conversation?

MR. MacCRATE: Your Honor, what a person does, I object to that, as a result of a conversation.

THE COURT: Well, it is impossible for me to tell what is sought to be elicited by the question.

Q Mr. Shippee, did you speak with Mr. Anderson after that conversation?

A I sat down and wrote a letter to Mr. Anderson immediately following the conversation.

MR. FARRELL: I offer Plaintiff's Exhibit 190 for identification.

MR. MacCRATE: The same continuing objection.

THE COURT: Very well, received subject to connection.

(Plaintiff's Exhibit 190 for identification was received in evidence.)

Q Mr. Shippee, I show you Plaintiff's Exhibit 190

for identification and call your attention to the first sentence and ask if Plaintiff's Exhibit 185 is the memorandum referred to?

A Yes, it is.

MR. FARRELL: Mr. MacCrate, I offer 185.

Q Mr. Shippee, I show you Plaintiff's Exhibit 189 for identification and ask you if that is the memorandum referred to in 190. You can look at 185 too. I don't want to confuse you.

A It is dated February 16 and addressed to --

Q Just --

A Yes, it is.

Q The memorandum referred to in 190 is Plaintiff's Exhibit 189 for identification, not 185?

A Correct.

MR. MacCRATE: So that your recollection is was Plaintiff's 185 was mistaken, Mr. Shippee? You identified the wrong document as being attached to that?

THE WITNESS: Yes, I did.

THE COURT: But you are now clear that it is 189?

THE WITNESS: Yes, I am.

THE COURT: All right.

MR. FARRELL: Which I offer, your Honor.

e 8 a.m.

jklt 1 Shippee-direct

MR. MacCRATE: My continuing objection, your Honor, to 190. No objection to 189.

THE COURT: All right. I'm somewhat puzzled; I'm receiving 189 on the basis that it is incorporated by reference and attached to 190. However, we'll go that way.

(Exhibit P-189 received in evidence.)

MR. MacCRATE: I withdraw my objection, your Honor.

THE COURT: To 190?

MR. MacCRATE: So we shan't confuse the record.

THE COURT: All right.

(Exhibit P-190 was received in evidence.)

Q At that time, Mr. Shippee, did you also write a night letter to Mr. Anderson?

A Yes, I did.

Q Where was he, do you know?

A I believe he was in Rome at the time. He was in Europe.

MR. FARRELL: Now I offer Plaintiff's 191, your Honor.

MR. MacCRATE: Continuing objection, your Honor.

THE COURT: Subject to connection.

(Exhibit P-191 was received in evidence.)

MR. FARRELL: I'm going to read this one, your Honor.

(MR. Farrell read to the jury from Exhibit P-191 in evidence.)

MR. FARRELL: I now offer, Mr. MacCrate, 195 for identification.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, Plaintiff's Exhibit 195 for identification shows notations in handwriting in the upper righthand corner. Are those file notations with respect to your files?

A I don't recognize them. I can't tell you.

Q Do you know if this document comes from your files?

A It appears to be a copy of an original because it has my signature on it. I cannot otherwise tell you if it came from our files or not. This is my writing here.

Q And you're referring to the upper part of a document dated July 8, 1964 which is one of a whole series of attachments that are now attached to the document, and I wanted to inquire qhether all of those attachments went with

the document in just that form to Mr. Anderson?

A Yes. The covering letter with the attached documents went. I don't know if this copy of the original, apparently, came from our files; I just can't tell you.

MR. MacCRATE: I object, your Honor, to this document going to Mr. Anderson on lack of connection.

THE COURT: I will excuse the jury and rule on the objection.

MR. MacCRATE: Also, I have an objection with respect to the attachments.

THE COURT: All right.

Members of the jury, will you withdraw for lunch, please, and return at about 2:15.

(Jury left the courtroom.)

MR. FARRELL: Your Honor, I have one housekeeping detail.

THE COURT: All right, what's the detail?

MR. FARRELL: We have redacted Exhibit 20.

THE COURT: Fine, give it to the clerk.

What is the basis for the admissibility of 195?

MR. FARRELL: Your Honor, this is a communication to Mr. Anderson by Mr. Shippee concerning the dispute that was then becoming quite clear between Phillips Petroleum and Prudential. It seems to me to be no reason at

all to object to it.

THE COURT: It looks to me from the second -- perhaps I ought to hear Mr. MacCrate first.

MR. MacCRATE: Well, it is a communication addressed simply to Mr. Anderson that has a number of self-serving assertions by Mr. Shippee to which is attached, and now presented, various letters, not all of which have been received in evidence to this time; one of which, the memorandum of July 8, 1964, has a handwritten notation at the top that is a strictly hearsay notation, which may or may not have been on any document that went to Mr. Anderson. But to suggest --

THE COURT: As I understand it, that particular document is already in evidence, July 8 '64.

MR. MacCRATE: And without that notation, your Honor.

THE COURT: I don't think there is any issue about the pencil notation.

MR. FARRELL: We don't care.

THE COURT: What concerns me is this, as I read the second paragraph of this document, it appears as if the author of the March 21, 1966 memorandum, which is the first page, or the first element of Exhibit P-195, is inviting Mr. Anderson to enter into litigation against

Puerto Rico Core, Ltd. on the side of Prudential or on the side of plaintiffs, and this does not appear to me to represent by any stretch of the imagination any dealings with Anderson in his capacity as an agent of Phillips or dealing with Phillips by giving notice to Phillips of something through Anderson.

This author is treating Anderson as a separate interest adverse to Phillips, and therefore besides being self-serving, I think it is not binding on Phillips. Its transactions with Anderson perhaps in a different capacity.

I have been talking subject to connection on the theory that it can later be established that Anderson had a rather broad agency or authority for the defendant in this case, and that it was broad enough so that a jury might infer that what Anderson was told or what Anderson knew was knowledge of Phillips and that what Anderson said might in some stretch of the concept here be deemed to be the statement of Phillips, vicarious statement of Phillips. But this document here I can't see any basis to make it binding on Phillips.

It is a self-serving invitation to Anderson to join in litigation against Puerto Rico Core, Ltd., and that is about all it is.

MR. FARRELL: Your Honor, if I might also

point out, there has been some comment by Mr. MacCrate of the staleness of this claim.

Now, we will show that we tried to straighten this out well before the suit was brought, and that this continued into 1967.

Now, all of these efforts, I believe, are part of this case, and they have been raised by Phillips, and any efforts that were made to resolve this matter up until the complaint was brought I think is relevant.

Secondly, the fact that this invites Anderson to take a course of action such as you described does not make Mr. Anderson any less an agent or representative of Phillips than he was at that time.

THE COURT: Well, if he arranged any meetings through Anderson.

MR. FARRELL: Well he did.

THE COURT: All right, he can testify as to those meetings. He can say that a meeting was held, and he can say that it was held following a request on his part to Mr. Anderson to schedule a meeting. But this particular exhibit, I believe, is objectionable on the grounds stated.

MR. FARRELL: Well, I will --

THE COURT: Any demands he made upon Phillips either directly or indirectly I will let him testify to.

MR. FARRELL: Let me just make one more try.

THE COURT: Sure.

MR. FARRELL: In view of Mr. Anderson's ambiguity, at least his ambiguous situation in this litigation, I think that the next to the last paragraph on the second page is quite important.

Now, at that point it is quite clear that Mr. Anderson had urged Mr. Shippee not to sue Phillips and --

THE COURT: If Mr. Anderson urged Mr. Shippee not to sue Phillips at some point he can tell us that. That I would take, because that might arguably be within the scope of Anderson's agency.

MR. FARRELL: We will do it that way, your Honor.

MR. MacCRATE: There is a suggestion here, your Honor, that Mr. Farrell is anticipating interrogation as to settlement discussions.

THE COURT: But you see, you opened this question, Mr. MacCrate, on your opening statement to the jury as to the staleness of the claim, suggesting it is not a bona fide claim, which is a valid argument to make, and laches, and I have been concerned over this whole question of laches, particularly the other question we discussed,

laches after the action is brought.

I think that is a separate question. But having tendered the question of laches, I think reasonable amount of evidence to show what efforts he made to assert his rights -- and I might say that they are ambiguous because in one of these meetings he's reported by one of the memoranda as saying on several occasions that we, meaning Prudential Oil, did a favor to Phillips.

MR. FARRELL: He's represented by a representative of Phillips who said that.

THE COURT: That's right. You and I weren't there so we don't know if he said that or not.

MR. FARRELL: Right. But Mr. Shippee didn't testify that he said that.

THE COURT: I'm quite aware of that. So I think you can show that you made demand, and what demand you made. It's also been shown somewhere in this chain of proof that there had been some discussion with Anderson to the effect that he was to fix a quantum of whatever Prudential was to receive. Do I state that correctly?

MR. FARRELL: I think you do, your Honor.

MR. MacCRATE: Yes, that was the testimony of Mr.Shippee today.

THE COURT: All right. I will sustain the

objection to 195.

Now, do I have another one that I promised to hear you in the absence of the jury concerning?

MR. FARRELL: Yes.

THE COURT: 153?

MR. MacCRATE: 153, your Honor.

MR. FARRELL: Yes, here it is.

THE COURT: I don't see any basis for admitting 153. But you may be heard in support of it.

MR. FARRELL: Well, your Honor, it's been shown from the stipulation of facts that at the day of this letter Mr. Coan had been retained by Phillips, and this was done almost a year prior to this letter, and I think that under those circumstances and the fact that we wrote to Mr. Coan as on the first page of the attachment concerning diversification of petrochemicals, etc., is appropriate to bring to the jury's attention.

MR. MacCRATE: There is no suggestion, your Honor, that Mr. Coan and Mr. Shippee were not on friendly terms. That is apparent in the frequent references in the record to that. But there is no relation of this particular communication just bringing his friend, Jack Coan up to date on what's going on with Prudential Oil Corporation. It is a full review of everything they're doing, and that is totally

irrelevant to the case.

THE COURT: I've already taken proof that they had expressed to o' r people in Phillips a desire to pursue a Puerto Rico petrochemical project for their own account, they being Prudential. That is already in the record and I think that this other exhibit is somewhat self-serving and cumulative and not necessary to take it.

MR. FARRELL: Well, your Honor, on the final page there is the item 2, Diversification into Petrochemicals, 1965, 1966, '67; Puerto Rico Core Plant completion in large amount in petrochemical field.

This refers to the core plant itself.

MR. MacCRATE: But totally self-serving.

THE COURT: I will sustain the objection to 153.

MR. FARRELL: Your Honor, on Exhibit 181, which you have sustained the objection to, which is a letter to Mr. Chapman, I also would like to state for the record that at that time Mr. Chapman was retained by Phillips, and base my offer on the same ground that I base the offer of Exhibit 153 to which you just sustained the objection.

MR. MARKS: May I make a point on that one, your Honor?

THE COURT: Yes, certainly. You see, I said

that he could testify that he had asked for a meeting, and that he could say they had a meeting, if in fact they did, and he could tell what took place at the meeting.

MR. MARKS: I think Mr. Chapman's failure, your Honor, to deny or respond to the allegations in this letter to Mr. Chapman by Mr. Shippee is certainly something that the jury can draw an inference from because --

THE COURT: Which allegation in there should he have responded to?

MR. MARKS: When he says that he was congratulating him on the fine job of quarterbacking that he had carried out for all of us. If Mr. Chapman's position was that Mr. Shippee and Prudential had no interest, it would seem to me he might write back and say "What are you talking about, that I'm carrying on for all of you? You have no interest in there."

But he didn't do that.

THE COURT: Would you, as a practicing lawyer, feel that you had to reply to that kind of a letter?

MR. MARKS: Given the history of this case and the correspondence with Mr. Chapman, your Honor, I think the jury could make an inference from that.

MR. MacCRATE: I think it would be a most prejudicial opportunity for an inference, if an inference

could be drawn.

THE COURT: You see, he's expressed in the same letter an interest that he has, independent of his claim to the core plant, and I think, I have to basically say I think it is irrelevant. I will adhere to my ruling.

I will see you all at 2:15. I have a matter coming at 2, so just push the papers forward on the table so they can have room. You don't have to take them away.

(Luncheon recess.)

AFTERNOON SESSION

(2.15 p.m.)

N A T H A N M. S H I P P E E , resumed.

THE COURT: You may proceed, Mr. Farrell.

MR. FARRELL: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. FARRELL:

Q Mr. Shippee, turning your attention to March 1966, did you request Mr. Anderson to arrange a meeting with anyone in Phillips?

A I did.

Q What did you say to Mr. Anderson?

MR. MacCRATE: Can we fix a time time and place?

THE COURT: Yes, let us fix the time and place.

Q Let us have the date if you 4emember and the place and time?

A It was in New York City. It was in -- could you help refresh my memory? The early part of 1966, was it January?

Q I will show you Plaintiff's Exhibit 195 for identification and ask whether that refreshes your recollection (handing to witness).

A It was in March of 1966, March 21, according to this record.

THE COURT: You had a meeting with whom?

THE WITNESS: With Mr. Anderson.

A I told Mr. Anderson that we were considering taking litigation against Phillips because we had not found a way to reason with them on the sharing of the project or the position that we wanted to make with the satellite in Puerto Rico.

He cautioned us against --

MR. MacCRATE: May I at this point interpose my objection? It is my continuing objection.

THE COURT: I will permit him to state the answer in so far as it has been taken. I will limit any further inquiry as to whether he directed or asked Mr. Anderson to do anything with respect to Phillips and Mr. Anderson said he would do so. I will permit him to elicit that.

But the fact that he asserted the claim to Mr. Anderson on this date, I will permit that answer to stand.

Q What did Mr. Anderson say to you, Mr. Shippee?

A Mr. Anderson advised me against taking any litigation against Phillips. He used the language to me that a small company should not pick a fight with a big company and I replied to him that the question of might makes right went out with the First World War and

we were going to stand up for our rights whatever the size.

Q What did he say to you?

A He again cautioned that we should not go to litigation until every other avenue had been tried and I asked him would he try another avenue and he said he would contact Phillips on our behalf.

Q Thereafter did you have a meeting with a representative of Phillips?

A Yes.

Q Can you tell us the date of that meeting?

A Approximately May or shortly after March - between March and May.

Q Who was at the meeting?

A Mr. Stanley Learned who was the operating head of Phillips and I believe it was the general counsel, Mr. Zeman of Phillips. Mr. Anderson was present, Mr. Willey and myself.

Q Tell me what you said at that meeting?

A I addressed myself to Mr. Learned --

Q Where did it take place?

A The meeting took place in Mr. Anderson's office in Rockefeller Plaza, New York.

Q Go ahead, tell me what you said?

A I addressed myself to Mr. Learned on the basis of my earlier visit to Bartlesville in 1965 where --

THE COURT: That is not what he said. Strike it out and start over again.

Mr. Anderson was there?

MR. FARRELL: Yes.

A In Mr. Anderson's office.

Mr. Learned, Mr. Zeman, Mr. Willey and myself.

THE COURT: Mr. Anderson was present?

THE WITNESS: All of these were present, yes, sir.

THE COURT: All right. Tell us what you said to them and then tell us what they told you, in substance.

A I told Mr. Learned that I had been with him in Bartlesville to discuss the satellite plant, that Mr. Willey had been with him in Bartlesville subsequently to discuss the project and both occasions he confirmed our mutual interest in both the satellite and in the main company plant and I found it inconceivable that since then and since talking with other of his officers about this satellite plant, that I should then have Mr. Johnstone tell us that Phillips recognized no part of Prudential's action in the Core Refinery in Puerto Rico.

Mr. Learned said that he confirmed that Phillips

did not recognize any part of Prudential and that the only standing Prudential would have would be like any other company coming to Phillips and seeking to put up a satellite plant.

I then asked Mr. Learned if he would go to our office in the same building and review our files and look at all of the documents over the past several years and he told me that he would not go but that Mr. Zeman would go and Mr. Zeman and Mr. Willey left the room and went to the office of Prudential and spent the next, the rest of the afternoon, the next two hours or so looking through our files.

I joined them at that point and I saw Mr. Willey hand to Mr. Zeman numerous copies of certain documents that he requested for copy and Mr. Zeman took them from the Prudential office to return to Bartlesville.

Q Thereafter did you receive a letter from Mr. Zeman?

A Yes, I did.

MR. FARRELL: I offer Plaintiff's Exhibit 200 for identification.

MR. MacCRATE: No objection, your Honor.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 200 was received in

evidence.)

MR. FARRELL: I will read this to the jury.

(Exhibit read.)

MR. FARRELL: Having read that letter, your Honor, I should like to point out that Joint Exhibit 45, which is the Phillips' proposal of January 1964, was not produced in this litigation until November 1972 although it was demanded and a demand for documents was dated June 11, 1970.

THE COURT: Well, I would take that only as bearing on the possible claim of lach es. I don't think it affects the ultimate merits of the legal side of the case for the jury but I will take that statement for the record

MR. MacCRATE: May I state at the same time for the record there was no request for the production of documents in this matter until 1970 and we had the greatest of difficulty in locating materials at that time.

MR. FARRELL: I will say, if that is what Mr. MacCrate --

THE COURT: We don't need any more testifying by lawyers, do we?

I will take the offer.

MR. FARRELL: They sure produced a lot of documents in response to the request.

THE COURT: Members of the jury, these particular matters discussed are not of your direct concern. I will explain all of this at the end of the case.

Q Mr Shippee, after you received the letter from Mr. Zeman did Prudential make any further attempts to adjust its differences with Phillips?

A Yes, Prudential tried.

Q Tell me what Prudential did in that connection?

MR. MacCRATE: Objection, your Honor.

THE COURT: I will sustain the objection and I will either take proof in the absence of the jury or I will take an offer of proof at the side bar, whichever counsel prefers.

MR. FARRELL: All right.

(At the side bar.)

THE COURT: Do you wish to make an offer of proof?

MR. FARRELL: Yes, your Honor.

THE COURT: Will it be very long?

MR. FARRELL: Very brief. I will offer to prove that Prudential New York authorized a member of the board of directors of its parent, Mr. Fred Glass, to meet

with Mr. Anderson and with Mr. Learned and there was an exchange of correspondence between Mr. Glass and Mr. Learned which ran into the year 1967 with the result that there was no accommodation reached and that is it.

THE COURT: Will you stipulate he can prove that, Mr. MzcCrate, for the purposes of the equity side of this lawsuit?

MR. MacCRATE: I believe that stipulation can be prepared, your Honor. It is not entirely precise in the form that --

THE COURT: What is imprecise about it?

MR. MacCRATE: Well, an individual concern had nothing to do with the subsidiary company.

THE COURT: The parent company of plaintiff?

MR. MacCRATE: Yes.

THE COURT: I don't think that is of any great moment.

MR. MacCRATE: I think that the question of with whom the discussions took place and what was said in those discussions bears directly upon the conclusory statement as to what was in fact entailed. There were discussions primarily of a satellite facility and notion that this was a matter for settlement of this litigation, I think that raises a real issue.

THE COURT: I will have to mark those letters for identification.

MR. FARRELL: They have been marked.

THE COURT: What are the numbers?

MR. MARKS: 205 and 206 are two of them.

MR. FARRELL: There is another one.

THE COURT: What is the last date that this particular series of efforts covers?

MR. MARKS: May 1967 appears to be the last date.

THE COURT: All right, 1967.

You may return to this opic later if you like.

MR. FARRELL: In the absence of the jury?

THE COURT: We will see. Probably.

(Continued on next page.)

(In open court)

MR. FARRELL: Your Honor, that is all I have at this time.

THE COURT: All right, you may cross examine, Mr. MacCrate.

CROSS EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, I believe you have generally described yourself as a banker?

A Yes.

Q But you have had a number of other occupations, have you not?

A All arising out of venture capital banking, different activities, but my basic training and my first business activity was in banking.

Q Well, you worked for this H&B Machinery Company from 1949 to 1953, didyou not, in Pawtucket, Rhode Island?

A Yes, I was in Shanghai; they were our major customer; I was asked to go back to America and handle their foreign sales. That was a customer of our bank.

Q What busines was H&B Machinery in?

A That was textile machinery and I was the foreign sales manager for getting their machinery to the

Caribbean and into India and Pakistan.

Q Then in 1959, as you have indicated, you founded a company known as Inpak Systems, Inc., is that correct?

A Yes, it is.

Q What is the business of Inpak Systems, Inc.?

A I made an invention or was awarded an invention on packaging, display packaging for self-service items and I formed a machinery company which leased the machines and sold the packaging materials to make those packages. It became a public company and I then sold it to United Shoe Machinery, in 1964.

Q In 1964 you sold it to United Shoe Machinery but in 1962 you were still a stockholder of Inpak Systems, Inc.?

A I believe I was the president.

Q And you had an office there?

A Yes, I did.

Q And where was that office?

A They were on the corner of Lexington Avenue and 45th Street.

Q And you went to that office regularly?

A Regularly, principally every morning.

Q Now, in addition to your work in Inpak

Systems, Inc., during 1962 and 1963, in what other business organizations were you engaged?

A Prudential Oil Corporation.

Q Which is the Connecticut corporation?

A Yes.

Q And it was at that time a rather modest in size company that was just recently started, was it not?

A It began in 1959.

Q And it, and then other Prudential corporations flourished in due time and became very large, did they not?

A Well, everything is relative. It became a public company and it is now a listed company on the American Stock Exchange. It had its regular growth.

Q And the assets in due course have grown to something in the order of how much?

A We have 9,000,000 barrels of oil and you may set the price on it, if you said $10, it would be $90,000,000.

Q Is there a company known as N. M. Shippee, Inc.?

A There was. There is no longer such a company.

Q For what period of time did that corporation exist?

A I can't recall precisely, but it was during this period of time, and perhaps up to 19 -- through the '60s, perhaps.

Q What was the business of that corporation?

A Personal ventures. I made several real estate projects, some of them were in Heritage Corporation and some were in N. M. Shippee, Inc.

Q You have mentioned the fact that you have been in real estate business as well.

A Yes.

Q As a developer?

A No.

Q What have you done in the real estate world?

A Very little. We sought projects. Our major concentration was in oil and gas exploration. We actually did very little in real estate. We had one project in Montego Bay, Jamaica, that is still being sought after; it's never been concluded. We really never got very far in real estate.

Q Do you have one in Spain and Madrid?

A We sought one in Madrid, Edificio Colombo, and we had a company set up in Madrid and we had a president active there, and we were about to make an investment of

$4,000,000, a 19-story building in Madrid, when the foreign exchange laws changed, and since we couldn't transfer the money from America to Spain, we closed our office and came back to New York.

Q And Robert Anderson was a partner of yours in that venture?

A No. Mr. Wright, Mr. Anderson's partner, was a partner in that venture, and I do not know if Mr. Wright would have shared with Mr. Anderson, although they normally did. That was Mr. Wright who was our partner in that venture.

Q Now, in 1962 you had had no experience in the refining of crude oil, had you?

A No, I had not.

Q Personally. And you had had no experience in the processing of oil products or petrochemicals?

A I personally had not.

Q And you had had no experience in the processing of chemicals?

A Correct.

Q And you had not theretofore been in any activity that involved the sponsorship of a major oil and petrochemical company, had you?

A Correct.

Q Now, you indicated in your direct testimony that there came a time in 1962 when you opened an office in New York City, is that right?

A Correct.

Q Can you fix that date?

THE COURT: You, being Prudential Oil Corporation of New York? Who?

MR. MacCRATE: I would like to find out, your Honor, whose office it was.

THE WITNESS: Prudential Corporation of Connecticut had an office in New York in 1962. I do not remember the date, but our records would show.

Q You already had one office at Inpak Services, and then you personally had a desk and office at another location sometime in 1962 in New York City?

A I would like to explain that I began to go to Mr. Anderson's office in One Rockefeller Plaza during this period, in the afternoons with him, and then when our activities became larger, we took our own office on another floor in the same building and I don't recall exactly when we made that transition.

THE COURT: Who is that "we"?

THE WITNESS: Prudential Oil Corporation of Connecticut.

THE COURT: And Mr. Anderson had a law firm there, did he?

THE WITNESS: No, he had his own suite of offices, having come out of the Secretary of the Treasury, he set upt Robert B. Anderson Associates, and had a suite of offices in the building, of which I occupied some space, and then took over our own office; Prudential Oil Corporation of Connecticut.

Q So during 1961 and '62 you actually shared space with Mr. Anderson?

A I used his office from time to time. I wouldn't consider that I occupied his office in the sense of paying him rent.

Q And he allowed you to do that at no expense to you?

A Correct.

Q And then you moved your desk to a separate location within the same building with Mr. Anderson?

A Correct.

Q And you continued to have offices in the same building with Mr. Anderson for what period of time?

A I believe for six or seven years.

Q You have made several references to going back and forth to Greenwich in Mr. Anderson's car. Do

you drive back and forth or did you during this period, 1961, '62, '63, drive back and forth with him on a fairly regular basis?

A One of Mr. Anderson's companies supplied him with a chauffeured limousine, and we used that from time to time and frequently rode with him to Greenwich. Sometimes he'd be out of the country and we'd take it by ourselves.

THE COURT: Who is this "we" in this last answer?

THE WITNESS: This was Prudential Oil Corporation, Mr. Willey and myself. Mr. Willey and I both lived in Greenwich with Mr. Wright and Mr. Anderson. And we all went to the same church, and we dropped each other off.

THE COURT: You all went to work in the same limousine?

THE WITNESS: No. We went to work by train. We came home by the limousine, because we went to work at different times.

THE COURT: All right.

Q Now, there have been references to Prudential New York, plaintiff in this action, and the fact that it was formed in July of 1966. Is it correct that since that time Prudential New York has never maintained any books of account?

A No, that's not correct.

Q Has it any time had any other business than the prosecution of this lawsuit?

A None to date.

Q Has it had any funds at any time?

A Yes.

Q When did it first have funds?

A I would have to refer to the records and ask the treasurer.

Q I show you a copy of interrogatory 3 and interrogatory 4, propounded in this action, and the answers given thereto on April 26, 1971, and ask you if that doesnot refresh your recollection in this matter.

MR. MacCRATE: Your Honor, would you like me to have this marked for identification before I show it to him?

THE COURT: If it's on file in the case, it is not necessary. If the originals have been docketed.

MR. MARKS: May the question be read back, please?

THE COURT: It's just been asked if that particular paper that's been filed in the action refresh his recollection with respect to the last answer.

THE WITNESS: This does refresh my recollection.

My answer is the same that I gave you.

Q Well, did you not, Mr. Shippee, verify the answers to these interrogatories in 1971?

MR. FARRELL: I object to that, your Honor. He said it didn't refresh his recollection.

THE COURT: I will allow it if there is a reasonable basis for asking it, he may be asked that. Perhaps you ought to show him the original interrogatories.

MR. FARRELL: There is no inconsistency, your Honor.

THE COURT: Hand them to the clerk. Which number interrogatory did you ask about?

MR. MacCRATE: I asked about interrogatory 3 and interrogatory 4, your Honor; the verification of the interrogatories appear on the page following page 27.

THE COURT: I think counsel had best approach the side bar.

(AT the side bar.)

THE COURT: I don't really see the inconsistency.

MR. MacCRATE: Your Honor, the inquiry relates to the business of the company.

THE COURT: I don't see answer (b) to number 3 is inconsistent with his testimony here, except I assume

that second word means "sold" rather than "sale." I don't think that is inconsistent.

MR. MacCRATE: But item (d) the dollar volume of the business transacted and any business --

THE COURT: Where is the answer to that?

MR. MacCRATE: That appears that "It is not applicable," because its only business is the prosecution of this action. And then at 4, the answer is --

THE COURT: I see the answer to 4.

MR. MacCRATE: And there is no reference to any books of the company.

THE COURT: Well, all right, his attention may be directed to the answer to interrogatory 4.

He may be asked "Do you recall verifying this answer to the following interrogatory?" The interrogatory can be read and the answer can be read.

(In open court.)

BY MR. MacCRATE:

Q Mr. Shippee, was the following interrogatory propounded and answered and verified by you in answer --

A Yes, it was.

Q I will read it to you so that you may confer.

A I have just inspected this.

THE COURT: It may be read.

Q Interrogatory 4:

"Please identify each of the books and records maintained by or on behalf of Prudential New York stating the person or persons responsible for maintaining such books and records, who has custody of each such book and record, and where they are located.

"A Prudential New York's corporate records consist of a corporate minute book, including its certificate of incorporation, bylaws and minutes of meetings of incorporators and directors, and its tax returns. All of the books and records of the corporation are in the custody of Patricia Morel at the offices of the corporation, One New York Plaza, New York, New York."

And you verified that answer in 1971?

A Yes, I did.

Q And you will note there is no reference there to any books of account?

MR. FARRELL: Your Honor, I object.

THE COURT: Well, he may be asked whether it has any books of account.

Q Were there books of account in 1971 at the time you answered this?

A My answer said that I would have to refer to

the records and to the treasurer. I will have to refer to the treasurer.

THE COURT: What counsel asked you, as I recall it, is did Prudential Oil Company of New York have any books of account? You understand what books of account are?

THE WITNESS: Yes, I do, and I believe they do, but of my own personal knowledge --

THE COURT: Did they in 1971?

THE WITNESS: I believe they had books of account from its origin. I know that they paid bills. I know they paid the legal fees leading up to this trial. I know that checks were drawn on Prudential Oil Corporation of New York and I have signed them. But I'd have to refer to the treasurer. I have two signatures on a check and I'm one of them, but the treasurer keeps the books.

Q During this time, 1966 and following, there has been another Prudential Oil Corporation in existence at some time, has there not?

A The record will have to answer the question because I'm confused.

THE COURT: He's asking for your best memory Mr. Shippee. He's asking your recollection. If you don't know, you can tell him, but he's asking whether at any time

during that time period there was another corporation of the same name, if you know.

THE WITNESS: At the time period of Prudential New York, was there another Prudential of the same name?

THE COURT: Is that the question?

Q Yes, was there another Prudential Oil Corporation?

A Within the Prudential group, because there was a Prudential Oil Corporation in Texas not related to us.

Q But within your Prudential group there was a Prudential Oil Corporation, a Delaware corporation, was there not?

A I would have to consult the records. I believe it was Prudential Funds, Inc.

Q The names were changed from time to time?

A That is the part I would like to consult the records because I wouldn't rely upon my memory as to the exact dates those names changed and the formation of the subsidiary took place.

Q At one time there was a Prudential Oil Corporation, a Connecticut corporation which no longer exists?

A Yes.

Q Is that correct?

A Yes.

Q Then there was a Prudential Oil Corporation, a Delaware corporation, that no longer exists under that name?

A Under that name.

Q And now, since 1966, there has been a Prudential Oil Corporation, a New York corporation?

A A wholly-owned subdiary of the parent company.

Q The parent company of Prudential Oil Corporation, the New York corporation, is what corporation?

A At this moment?

Q At this moment.

A The Prudential Group, Inc. is the parent company.

Q In 1962 Prudential Oil Corporation had two stockholders early in the year, Mr. Willey and yourself who held 75 per cent of the stock, did it not?

A Something over 60 per cent. I can't be sure of the amount but the majority of the stock was held by Mr. Willey and myself.

Q What had been your capital investment in Prudential Oil Corporation, the Connecticut corporation, just in the general order of magnitude?

A Approximately $10,000.

Q Now, early in 1962, you made a proposal did you not for the formation of a corporation to which you have already referred just a few moments ago by the name of Heritage Corporation?

A Yes, we did.

Q Heritage Corporation was a corporation that you proposed be formed with Mr. Willey and Mr. Anderson and Mr. Wright, was it not?

MR. FARRELL: I object to this. It has no apparent relation to this lawsuit.

THE COURT: I think Heritage Corporation was mentioned during the direct testimony so I will permit limited inquiry.

A Yes.

Q It was anticipated upon its formation that it would hold stock in Prudential Connecticut, was it not?

A It was to be, to invest in Prudential Connecticut stock, yes.

Q Also in Currency Package Corporation?

A That eas another enterprise, yes.

Q Also the Contect Corporation?

MR. FARRELL: I think this goes beyond it. It has been established --

THE COURT: It may be but if they in fact invested in any of those companies and this witness had anything to do with the ownership or management of Heritage during the relevant period, I would permit that to be developed.

A Yes.

THE COURT: Not whether they intended to but whether they did would be of relevance.

Q The proposal was presented to the board of directors of Prudential Oil Corporation to make shares available to Mr. Anderson and to Mr. Wright, was it not?

A Correct.

Q But they did not want their names to appear, isn't that correct?

MR. FARRELL: I object to that, there is no foundation.

THE COURT: I will sustain that as to form.

MR. FARRELL: It is not true.

THE COURT: If Mr. Anderson had any particular discussion about his name appearing I will take that subject to connection.

Q Did you discuss this with Mr. Anderson at the time, the possibility of issuing shares of Prudential Oil Corporation to him?

A Yes, I did.

Q Did he indicate to you that he did not wish to have the shares in his name?

THE COURT: Die he say it to you in words or substance? Let's not have indicate. Did he say it to you?

A Mr. Wright told me, not Mr. Anderson but I understood he spoke for Mr. Anderson and himself.

I would tell you what Mr. Wright told me if you ask me.

Q I will ask you that, what did Mr. Wright tell you?

A Mr. Wright told me that he and Mr. Anderson had a lot of interests in natural resources, including Vantures Limited in Connecticut and with certain oil transports in the United States and Canada.

Since they dealt with many oil companies they didn't want to be identified with a particular oil company and they would be glad to help us in any way they could but they didn't want to be recorded as shareholders.

That let us to suggest that we would form a company with them called Heritage and put stock in various enterprises that Mr.Willey and myself were doing personally, into Heritage and indirectly share with each other in that way. That had been investigated by Robert Holland, a tax firm here in New York --

Q I ask you at this point --

MR. FARRELL: Your Honor, I think he opened the door.

THE COURT: He didn't open the door to anything more than has been answered already.

Q Now, Mr. Shippee, did there come a time in the spring of 1962 when Heritage Corporation was incorporated?

A As I recall it was incorporated but it never became an active company and therefore I may be confused whether we intended to and didn't or whether we did and it

was dissolved.

Q Mr. Shippee, I show you Defendant's Exhibit 78 for identification and ask you if that refreshes your recollection as to the incorporation of Heritage Corporation?

MR. FARRELL: May I see that?

THE COURT: Yes, Mr. Farrell may look at it.

(Handed to counsel.)

THE COURT: Don't you have a copy of that exhibit, Mr. Farrell?

MR. FARRELL: Yes, I have but I want to be sure it is the same copy.

THE COURT: All right.

Is there an extra set of these?

MR. RIGNEY: May I bring them up?

A That is a preparatory document. I really don't know if it was ever filed with the State. That wouldn't appear to indicae it actually became a corporation as far as I can see on that document.

Q I show you Defendant's Exhibit 89 for identification dated July 16, 1962 and I ask you if that refreshes your recollection as to the incorporation of Heritage Corporation?

A It is notice to the State of Connecticut --

THE COURT: He is just asking whether that paper upon reading it --

A I still don't know if it was actually a corporation.

THE COURT: Is this someth ing that can be stipulated to?

MR. FARRELL: We will stipulate, your Honor.

THE COURT: When was it formed?

MR. FARRELL: May 31, 1962.

THE COURT: All right.

MR. MacCRATE: Filing made with the Secretary of State of Connecticut on July 16, 1962.

Would that be stipulated as well?

MR. FARRELL: Sure.

THE COURT: It is stipulated now there was such a corporation.

Q After the formation of Heritage Corporation, is it not the fact that 10,000 shares of Prudential Oil Corporation were issued to Heritage Corporation?

A If that is the record then that is correct. I know that shares were but I would like to have some refreshment. If the number precise is important I would like to refer to the record. If the record so states, I know that shares were drawn.

Q Then there came a time, did there not, when a question was raised about the tax problem of Mr. Anderson and Mr. Wright with respect to having the shares of Prudential Oil Corporation held by Heritage Corporation?

MR. FARRELL: Your Honor, I think this is going too far and I object.

THE COURT: I will take an offer of proof as to that matter. Please approach the bench.

(At the side bar.)

MR. MacCRATE: Defendant will offer to show that the shares of Heritage Corporation were issued to Robert Anderson, William Wright, Nathan Shippee and Edward Wiley, 25 per cent to each.

That the capital for Heritage Corporation was subscribed by the same four gentlemen and that this continued to be the situation until on or about October 23, 1962.

That on or about that date, due to what are claimed to be tax problems of Mr. Anderson and Mr. Wright, the transaction was rescinded and the board of directors of Prudential Connecticut on December 2, 1962, took note that the option given to Messrs. Anderson and Wright to purchase shares of Prudential Corporation Connecticut had been canceled due to tax considerations.

THE COURT: I would certainly think that this is a matter which ought to be stipulated to and not waste time. It is relevant to the case what the relationships were between Anderson and the plaintiff for Anderson and the witness.

I don't know what authority there is for saying they were tax problems but if the minutes say so I should think you would present a stipulation.

MR. FARRELL: No one asked us to stipulate.

THE COURT: I am asking you to stipulate it unless you dispute it --

MR. FARRELL: I don't dispute it.

THE COURT: All right, let's have it stipulated on the record and we will go on to something else.

(In open court.)

THE COURT: Mr. MacCrate, would you like to make a statement for the record or would you prefer to have the Court Reporter read back this statement taken at the side bar? Do you have a preference?

MR. FARRELL: I have no preference, your Honor.

MR. MacCRATE: The statement at the side bar would be an entirely acceptable form of statement for the record.

THE COURT: Members of the jury, it has been

stipulated for purposes of this trial that the evidence will show the following information which the Court Reporter will read back to you from a statement which Mr. MacCrate just made to the Court in a side bar conference.

Before he does this I might tell you that side bar conference are a regular part of our procedure whereby attorneys and the Court attempt to expedite the trial and resolve any legal problems that may appear and what is taken up at a side bar conference ordinarily is of no concern of the jury and should you happen to overhear any words of a conference between the Court and the lawyers, disregard it, put it out of your mind. It has nothing to do with your function in this trial.

In this particular situation the parties have agreed that the following facts are so for purposes of this trial and Mr. Russell will now read them to you.

(Stipulation read.)

THE COURT: Let us go on to something else now.

Q Mr. Shippee, Mr. Wright and Mr. Anderson have not since that time had any stock interest in Prudential Connecticut or in Prudential New York, the plaintiff in this action?

A I am uncertain. We are a public company and

many shares are held in street name and of my own knowledge I don't know.

Q I directed my question to Prudential Connecticut, the old company and to Prudential New York and in the case of Prudential Connecticut, it had no public shareholders, did it?

A The first time we went public I believe was in 1965.

THE COURT: Am I not correct in understanding that Prudential Connecticut is now dissolved?

THE WITNESS: I am now going back to those years. We were public before it was dissolved. I simply don't know. Not to my knowledge.

Q Mr. Wright and Mr. Anderson at no time have been employees of either Prudential Connecticut or Prudential New York, have they?

A They have never been employees of either company.

Q But during these years you have had various financial relations with Mr. Wright and Mr. Anderson, have you not?

MR. FARRELL: I object to the form of that.

THE COURT: Sustained as to form.

Q Have you been in joint ventures with Mr. Wright and Mr. Anderson?

A Yes.

Q And this is during the period 1961 to date?

A To date.

THE COURT: You are presently engaged in joint ventures with Mr. Anderson?

THE WITNESS: Yes.

Q Have you ever had any direct communication with Mr. Bruce K. Brown?

A Yes.

Q You testified that you first met Jack Coan in late summer of 1962 or the early fall of 1962, is that correct?

A Yes.

Q And that he was introduced to you by Mr. Gruber of E.M. Warburg & Company?

A E.M. Warburg are investment bankers, are they not?

A Yes.

Q And actually Mr. Gruber was a neighbor of your then-brother-in-in-law, Mr. Little, in the summer of 1962?

A The word "neighbor" isn't it correct. There was a summer house there and he rented a cabin in a summer residence for two or three weeks.

Q And it was in this way that the relationship

began?

A No. It began prior to that. It was through the relationship that he became a summer tenant.

Q Well, was it called to your attention at that time, in the late summer, early fall of 1962. that E.M. Warburg had been working with Mr. Coan since some time in the spring of 1962?

A Correct.

Q And did they tell you at that time what Mr. Coan's objective was?

A Yes.

Q And what did they tell you as to what Mr. Coan's objective was?

THE COURT: Is it clear who the "they" is?

Q Who in the Warburg firm told you about what Mr. Coan had done with them when you first were in touch with them?

A Walter Gruber.

Q And what did Walter Gruber tell you?

A Mr. Gruber represented that there was an opportunity for Prudential to bring a project together that was faltering in Puerto Rico, that he felt that there was a very high profit potential and also of very high political significance; that many Puerto Ricans had come to America

and been trained through high school and college and had no jobs to go back to; there were many jobs for uneducated people but there were few jobs for educated people such as engineer and accountants.

Q So Mr. Gruber told you the whole background?

A He gave me a political-social pitch and felt that we would be well attracted to looking at this project.

Q Well, haven't you previously testified that Coan turned to you, or someone had asked if you had funds available to finance out of pocket costs?

A Mr. Coan asked if we had funds available to pay for the seed money and the expenses of Mr. Chapman. I asked him how much Mr. Chapman's expenses would be and he told me and I said yes, we had access to funds to do the seed money and pay Mr. Chapman.

Q Now, this was in your early conversations with Mr. Coan.

A That was at the very first meeting, in early 1962, the first meeting with Mr. Coan.

Q Did Mr. Coan mention the name of Bruce Brown?

A Yes, and he gave me documents that had letters from Bruce Brown.

Q And he told you of the work that he had been

doing with Bruce Brown, did he not?

A Yes, he described his work with Bruce Brown.

Q Did he tell you something of Mr. Brown's background and experience?

A Yes, he did.

Q What did he tell you of Mr. Brown's background and experience?

A He told me that Mr. Brown, who had been a director of Murphy, was now joining Murphy Oil Company as an officer, as a high officer, and that he was no longer available for the project.

Q What did he tell you, Mr. Shippee, of Mr. Brown's background, not what he was doing?

A I don't recall that he gave me any particular information about Mr. Brown's background. He told me why Mr. Brown was leaving the project.

Q And later on in the fall of 1962, I believe you testified that Mr. Coan turned over copies to you of various materials he had assembled and prepared concerning a petrochemical project in Puerto Rico, is that correct?

MR. FARRELL: Your Honor, I object to the form of the question.

THE COURT: Well, the form is bad.

Q Did there come a time, Mr. Shippee, when Mr. Coan turned over various materials to you relating to a Puerto Rican petrochemical project?

A Yes.

Q And there was a substantial volume of material, was there not?

MR. FARRELL: I object to the form.

THE COURT: Well, I will sustain it as to the form.

Don't we all know this that there's lot of papers in this lawsuit?

Q It included, did it not, port-side studies?

A Yes.

Q And it included surveys of Puerto Rican resources?

A Yes.

Q And it included surveys of Puerto Rican industry and employment?

A Yes.

Q And it included surveys in Puerto Rican imports and exports?

A Yes.

Q And it included a series of studies on the desirability of creating an industry which would employ educated people and be the core of developing satellite

plants, making intermediate and consumer products?

MR. FARRELL: I object to the form of the question.

THE COURT: He is asked whether the materials turned over by Mr. Coan included that concept.

MR. FARRELL: He didn't ask that. The question was very vague.

THE COURT: If the witness understands the question he can answer it. If he doesn't understand it, he can say so.

A Yes.

Q And did he turn over to you brochure material from the summer of 1961, including what has been marked here as J-3, a joint exhibit, a prospectus?

MR. FARRELL: Your Honor, could Mr. MacCrate show the witness the exhibit he referred to?

THE COURT: Yes, I think he should see the exhibit.

Is there any argument about whether J-3 came from Coan?

MR. FARRELL: We will have to look.

THE COURT: You see, we shouldn't waste time with things that can't be disputed.

Are you conceding J-3 came from Coan?

MR. FARRELL: I concede that Mr. Coan originally had it. We don't concede that it came to Mr. Shippee from Mr. Coan.

THE COURT: All right.

Then the witness may answer whether Exhibit J-3 was given to him by Mr. Coan.

Q I show you a copy of J-3, Mr. Shippee, and ask you if that was included among the papers given to you by Mr. Coan?

A I believe this was given to me by the investment bankers.

THE COURT: By that you mean Warburg?

THE WITNESS: Kuhn Loeb, I think.

Q At or about this same time in 1962?

A Yes.

Q And did the materials include a brochure prepared by the Gibbs group in the fall of 1962?

A Yes.

MR. FARRELL: Your Honor, I would like Mr. MacCrate to show that to the witness if he has one.

THE COURT: Not necessary. The witness understands what the attorney is talking about and he has answered yes.

If you want to offer that exhibit, if it is not

already in evidence, you may do so when you have redirect examination.

Q And did Mr. Coan also make available to you the brochure that he and Mr. Chapman and Mr. Brown had put together in the spring of 1962?

A Yes, I recived that.

Q And did he also make available to you various project designs prepared by Universal Oil Products in 1961 and 1962?

A Yes.

Q Now, you were told, were you not, that Mr. Coan, through Omega Management, his company, had actually paid for the feasibility study by Universal Oil Products?

A No.

Q You were unaware that Mr. Coan had paid anything to Universal Oil Products Company?

A I was told the bill had not been paid and I should pay it.

(Continued on next page.)

THE COURT: Who told you that?

THE WITNESS: Mr. Coan. It was part of the accounting of what was owed to Mr. Chapman and others.

Q Did Mr. Coan indicate to you that the work of Universal Oil Products had commenced in the fall of 1961 and had extended through to the spring of 1962?

A I don't recall. He gave me a book. He gave me these materials in the first meeting. Most of these materials I had in that first meeting with him and took them -- there were two large cases of them. And he told me the approximate amount of monies that were due, and I know that the amount of money due Parsons and UOP were among them, and I told Mr. Young subsequently to contact Parsons and UOP and work out a continuing relationship, and we'll settle up all at once.

Q But so far as any past expenditures that Mr. Coan or Omega Management had paid, this was not a subject of your conversation, was it?

A He told me about the amounts due and owing. He didn't mention if he had ever paid anything or anything other than the ones that were due to be paid.

THE COURT: As soon as you finish this line of inquiry I will take a brief recess.

MR. MacCRATE: I would suggest suspending

at this time.

THE COURT: Very well.

Members of the jury, we will take a brief recess. Please withdraw to the jury room.

(Recess.)

(In open court - jury present.)

BY MR. MacCRATE:

Q Mr. Shippee, prior to the recess I was inquiring regarding various materials that Mr. Coan made available to you in or about October of 1962 , and I would like to ask you if in addition to those that we have already referred to he provided you with materials relating to communications with various chemical companies with whom the prior individuals who had been working on a project had been in touch, Monsanto and Celanese and others?

A Yes.

Q And Mr. Coan had also been in touch with Parsons Engineering, had he not?

A I received a report from them. I don't know if he had been in touch or Mr. Brown or who, but among the papers was a report from Parsons Engineering.

Q And you say among the papers from Mr. Coan?

A Yes.

Q And he also made available to you copies of

various communications with EDA and the Puerto Rican authorities?

A Yes.

Q And correspondence with various oil companies such as Phillips and Sun and Murphy?

A Yes.

Q And correspondence with other prospective promotors with whom he had been in touch, for example, Mr. Wilson in the summer of 1962?

A I think that came later, but I recall seeing that.

Q You continued to work very closely with Mr. Coan after that time, did you not?

A Yes.

Q And how frequently did you see Mr. Coan during this period in October, November, December 1962?

A Almost daily.

Q And he introduced you to Oscar Chapman, did he not?

A Yes.

Q And did he tell you about Mr. Chapman's relation to his prior work, Mr. Coan's prior work on a Puerto Rican petrochemicals project?

A Yes.

Q And did he tell you that Mr. Chapman had a personal interest in that project?

A Yes.

Q And did he help you in relation to relations with EDA and the other Puerto Rican authorities?

A Yes.

Q And did he also serve as something of a go-between for you with Mr. Chapman in various matters?

A Yes.

Q You, yourself, you personally had rather limited contact with Mr. Chapman, did you not?

A No, I felt that I had ready access. I visited him in Washington three times, I visited him in New York several times, but I talked to him on the phone frequently. I had as much contact with him as any business relationship, I could have all the contact I wished.

Q You could have had?

A I did have.

Q You referred to three visits in Washington?

A To his office.

Q Could you stop right there and identify for us the times of those three visits?

A Yes. The first visit was February or March of '63.

Q And when was the second visit?

A The second visit would have been mid-'64. No, it would have been about a year later, it would have been about March '64.

Q Would it have been in the first half of 1964 but not until 1964?

A Yes. I believe there were two visits in 1964.

Q When was your second visit in 1964?

A I am trying to recall. It was at the time of the hearings which would have been in July I presume of 1964.

Q As far as you can recall those were the only times that you met personally with Mr. Oscar Chapman?

A In Washington, D.C.

Q Now, you referred to the fact that you had also visited with him on perhaps two occasions in New York?

A Yes. The first time in the office of Warburg on, as I recall, October 22; and then on July 2, 1963 in Mr. Anderson's office in New York.

Q On July 2, 1962?

A 1963.

Q Thank you. Those two times in the fall of 1962 and the summer of 1963?

A Yes, in New York.

Q As far as you can recall today, those five visits, the two in New York and the three in Washington, were the only personal visits you had with Mr. Chapman?

A As far as I can recall, that is correct.

Q I think you referred to the fact that in October of 1962 at the meeting at the Warburg offices, that you put on a Monday, which you thought was the 22nd of October, 1962, that Mr. Chapman made a request with respect to compensation; is that correct?

A Yes.

Q Did he read a document at that time?

A He read from a document at that time, yes.

He referred to some prior undertakings of the earlier group and asked if we were willing to assume those obligations.

Q Mr. Shippee, I show you Plaintiff's Exhibit 55 and ask you to look at Plaintiff's Exhibit 55 for identification and see if the information set forth in that letter reflects what Mr. Oscar Chapman read to you in October 19[illegible] in the offices of Warburg & Company?

A Yes, and there was another document in addition to this.

Q Can you identify for us the other document from which you believe he was reading?

A No, I can visualize it. It was more or less an accounting sheet with numbers on it. It was not a letter, it was a memorandum sheet. I know he referred

to another sheet. It may have been a summary of that letter as a matter of fact.

MR. MacCRATE: I would offer in evidence at this time Plaintiff's Exhibit 55 for identification.

MR. FARRELL: No objection.

THE COURT: You want it renumbered? I don't insist on it if you want to change the number.

MR. MacCRATE: I will be happy to have it a plaintiff's exhibit if plaintiff would like to have it.

MR. FARRELL: That is all right.

THE COURT: Plaintiff's Exhibit 55 received.

(Plaintiff's Exhibit 55 for identification was received in evidence.)

Q I believe you testified, Mr. Shippee, that in the course of October 1962 that you indicated that you would take on the active sponsorship of a petrochemical project in Puerto Rico?

A Correct.

Q In connection with that sponsorship did you investigate what the expense might be for legal fees to Mr. Oscar Chapman?

A Yes.

Q What did Mr. Chapman indicate to you as the initial cost involved?

A The assumption of the amounts due and that he would work free of cost because he wanted to have a share of the equity but that we had to recognize the time of his partnership and that that would be charged in a regular monthly basis and, as I recall, it was to be $2000 a month.

Q What do you recall with respect to the legal expense up to October 1962?

A Approximately $20,000 was then due.

Q Did you assume responsibility for those obligations at that time?

A Yes.

THE COURT: Who was the you in that answer?

THE WITNESS: Prudential Oil Corporation of Connecticut.

Q Did you at that time put anything in writing in that regard to Mr. Chapman?

A Not at that time.

Q With respect to Mr. Coan did you assume any corresponding obligation to him for services previously rendered?

A No.

Q But you did expect to pay, did y ou not, for an engineering report that you hoped to receive?

A We have the report is that was the report he had given us.

Q Did you undertake to pay for that?

A Yes.

Q But as far as Mr. Coan was concerned, you neither assumed any undertaking to pay him for his past services, or to pay him for the future for his out of pocket expenss?

A He told me at the initial meeting that none of his expenses would be assumedby the project; that he was directly engaged by the Puerto Rican Commonwealth and he never asked us for anything and we never offered him anything. He told us that he was being compensated by Puerto Rico.

Q Did you in fact at any time pay anything either to Mr. Chapman or to Mr. Coan?

A In cash?

Q Yes.

A No.

Q With respect to the investment banking companies, E.M. Warburg and Kuhn Loeb, did you assume any obligation in the fall of 1962 when you assumed the sponsorship of the project?

A I don't understand the word obligation.

Q Was there any financial obligation mentioned, money owing for services that had been rendered either by Warburg or by Kuhn Loeb?

A No. We did not assume any accounts due to either of those company.

Q You have testified that the obligations you did assume were obligations of Prudential Oil Corporation, the Connecticut corporation, is that correct?

A Yes.

Q Did you not earlier testify that you, Willey, Anderson and Wright were to share in what was left over after taking care of Coan and Chapman?

A Yes. Also stipulated that Shippee and Willey's share would belong to Prudential.

MR. MacCRATE: I move to strike out the last answer as unresponsive.

MR. FARRELL: No, your Honor.

THE COURT: Well, I will permit it to stand and you may inquire further into the area.

Q In November 1962 you have indicated that you had various conversations with Mr. Anderson about this project, did you not?

A Yes.

Q You indicated that you asked Mr. Anderson to see

if he could arrange to get you a crude supply for the proposed project in Puerto Rico?

A Yes, to replace the loss of Murphy and Brown.

Q Did you in your conversations with Mr. Anderson at that time mention the percentage of supply that you hoped to get from that oil company?

A I don't understand the words percentage of supply.

Q Were you seeking an oil company for the entire crude oil supply to the refinery?

A Yes, one single source.

Q But as far as the disposition of the products of any petrochemical facility or refinery in Puerto Rico, you were thinking in terms of that oil company taking off something less than the whole the product, were you not?

A We were thinking of chemical companies taking all of the output. The crude supply we thought of separately, a crude supplier and the satellite plants would be chemical companies.

Q Thereafter when you were talking about the possibility of getting an oil company to provide a back-to-back contract, you were thinking in terms of something in the order of 90 per cent of the products of the refinery

going to that oil company?

A No. The concept was that we would have to get firm commitments from satellite plants before we even put up the core. This is the concept we were given. It was the hen before the egg.

We had to get the satellites first and then build the refinery. We were going for contracts with chemical plants to take the products of a visionary refinery and then have the core.

Q It is your testimony that in November of 1962, before you spoke to Mr. Anderson and in your conversations with Mr. Anderson, you did not mention 90 per cent as what would be taken by the oil company from the refinery?

A I don't recall that reference and it is out of context with your question.

I don't understand the question in the context of anything you are askign me.

Q In connection with your letter that Mr. Learned sent to you in November of 1962, did Prudential Connecticut at that time assume any financial obligation to Phillips?

A I can't understand your question.

Q You were not aware of any financial obligation that Prudential Connecticut assumed at that time to Phillips?

A I still don't understand your question. I am trying to help you but I just can't imagine -- I am visualizing the letter.

THE COURT: Read back the question.

(Question read.)

THE COURT: I think the question perhaps could be rephrased was there any undertaking on the part of Prudential Connecticut to pay obligations for the account of Phillips.

Q Will you answer the Judge's question?

A No, there was none.

Q In November of 1962 did you make any undertaking to Phillips?

MR. FARRELL: I object to the form of that question.

THE COURT: If he doesn't understand the question he can say so.

A Yes, we made an undertaking to Phillips to work with their representative who had been designated as Mr. Fischbeck and we turned over to Mr. Fischbeck in full faith and trust all of our work up to that time and proceeded to work with him.

Q Now you are trying to talk about what you did. I am asking in November 1962 did you say to anyone at

Phillips that for Prudential Connecticut you were undertaking any obligation to Phillips?

A Yes.

(Continued on next page.)

Q To whom did you say it?

A Mr. Anderson.

Q Your only conversation at that time that you identify in any way with Phillips was with Mr. Anderson, is that right?

A On November 13th or 14th, and at that time, which is following receipt of the letter of November 13th, and at that time I asked Mr. Anderson to advise Phillips that we would like to work with a particular person and to please designate someone, and the designee was then told to me by Mr. Anderson, that he had talked to Phillips, and that Dale Fischbeck would be the person from Phillips to work with Prudential Oil Corporation Connecticut, and that Mr. Fischbeck had some background on the project.

Q You're proceeding, Mr. Shippee, to talk about what happened. I was asking you what you said to anyone about assuming an obligation to Phillips and I believe you say that this was the sum of it in your conversation with Mr. Anderson, is that your testimony?

A In the middle of November, upon receipt of the letter, Mr. Anderson telephoned and told me he had the letter. I went to his office. Mr. Anderson handed me the letter. I read it to him and I told Mr. Anderson that this letter goes far beyond what we were seeking and he said,

"Yes, you're going to need a strong partner, and that's what I told Mr. Adams, and that's what you've got here" and I said "Well, that's wonderful, who can we work with?"

And he said, "Well, who do you want?" And I told Mr. Anderson at that time that they should designate a person.

Q Is this an obligation --

THE COURT: I think he is trying to answer. I will permit him to answer. If it is not responsive, I will strike it out.

MR. MacCRATE: It is repetitious of what we heard on direct examination.

THE COURT: That might well be.

A Mr. Anderson then telephones Bartlesville, and he then told me that Dale Fischbeck would be assigned to work with us and would contact me, and that happened immediately in that first meeting, having received the letter.

My next contact with Phillips was with Mr. Fischbeck in New York City.

Q And you don't fix that until some time in 1963, do you?

A I fix it as after my return from Puerto Rico and since I returned from Puerto Rico on December 1st, I believe the first contact was in mid December of 1962.

Q Now, in 1962, were any obligations taken up on the books of Prudential Connecticut with respect to this project?

A By obligations, you're referring to accounts payable in checks for cash?

Q Yes.

A Not for an assumption of obligations. I'm not sure of your question. We had assumed all of the obligations.

Q Are you aware of any record that was made at any time during the year 1962 of any obligation of Prudential Connecticut to anyone with respect to this project?

A Yes.

Q What is that?

A For the expenses of Mr. Young and myself to go to Puerto Rico, I would have to refer to the records of the company that time because I haven't examined the records with that question in mind, but the general out-of-pocket expenses began almost immediately.

Q Mr. Shippee, I am going to ask you overnight to look at the cash book of Prudential Connecticut and, tomorrow, when we resume, you will be able to tell me any item in that cash book of 1962 that had anything whatsoever to do with the Puerto Rican project.

MR. FARRELL: Your Honor, I object to Mr. MacCrate giving the witness homework.

THE COURT: Under the peculiar circumstances here, I will --

MR. FARRELL: Your Honor, the books have been produced. Every record, every document that Phillips has ever asked for in this case has been produced.

THE COURT: I will discuss this further with you in the absence of the jury.

Members of the jury, at this time I am going to excuse you for the day. I will not be able to resume until 10:15 tomorrow morning. So please assemble in the jury room at 10:15 in the morning.

You may now withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: Mr. Farrell, I think in view of the somewhat ambiguous answer to the interrogatories, which do not disclose that this corporation had a cash disbursements journal or that it had books of account.

MR. MacCRATE: Excuse me, your Honor, that was Prudential New York that we were addressing ourselves to there.

THE COURT: Well --

MR. MacCRATE: This relates to the original

corporation. I have here the cash book. I have pored over the pages for 1962, and I can't find anything that looks to me like an item.

THE COURT: I think it is perfectly reasonable for counsel and for Mr. Shippee to take a look at that book between now and tomorrow, and I think they ought to point out to you informally first what items they contend for within that definition.

If there are no such items, then I again plead with both of you gentlemen, don't bother this jury by trying facts which are not reasonably disputable. If it is not in there, it is not in there. I ask all of you to agree on that fact, and stipulate to it, and make a statement on the record, and then go on to something that really is in dispute.

MR. MacCRATE: Your Honor, perhaps in the interest of expediting it --

THE COURT: It is not homework.

MR. MAcCRATE: I would ask that they at the same time explore for the years 1963 and 1964.

THE COURT: You're asking for money spent on the project.

MR. MacCRATE: Yes. I have found two transactions, one a bill for $100, relating to a copy of some

UOP papers, and then one in the fall of 1964. I'll be happy to share that information with you.

MR. FARRELL: Do you have those other books?

MR. MacCRATE: All years of Prudential Connecticut are in that book.

THE COURT: What is the number of that book for the record?

MR. MacCRATE: It was marked as defendant's --

THE COURT: What is the number on this trial?

MR. MacCRATE: It has not yet been marked on this trial, so we should assign a number to it.

THE COURT: Let's assign a number to it.

MR. MacCRATE: D-317.

THE COURT: Marked for identification.

(Exhibit D-317 was marked for identification.)

THE COURT: All right, is there anything else to be covered that would expedite tomorrow's proceedings in any way?

MR. FARRELL: No, your Honor.

(Adjourned to January 8, 1976 at 10:15 a.m.)

PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

---

New York, January 8, 1970;
10.15 o'clock a.m.

(Trial resumed.)

- -

(Jury present.)

N A T H A N S H I P P E E , resumed.

THE COURT: Mr. MacCrate, you may resume the cross-examination.

CROSS EXAMINATION (Continued)

BY MR. MacCRATE:

Q Mr. Shippee, have you reviewed Exhibit 317 over the recess which is the Prudential Connecticut journal?

A Yes.

Q Can you now identify us during the year 1962 any expenditures recorded in that journal relating to a Puerto Rican project?

A This journal would not so identify. It is a ledger of checks issued but there are no invoices nor checks or indication in this book as to the nature.

Q Is it your testimony that none of the items in

that book relate to expenditures for the Puerto Rican project?

A That is not my testimony.

THE COURT: He answered it and I will let the answer stand.

Q Mr. Shippee, who made the entries in that book?

A I believe a Mrs. Barkley who was then an employee of Prudential Oil Corporation at Greenwich, Connecticut. I recognize this as her hand.

Q Is there anyone presently in the employ of Prudential New York or of the parent corporation, who is knowledgeable with respect to that book?

A Yes.

Q Who is that?

A Mr. Allen, a CPA in Greenwich, Connecticut. He is still employed by Prudential Oil Corporation on a retainer basis.

Q Who had check signing authority for Prudential Oil Corporation during that period?

A Mr. Willey and myself.

Q So that all of the checks that are entered in that book are signed either by you or by Mr. Willey, is that correct?

A I believe so.

Q You are unable from reviewing the entries in that journal to identify any expenditure relating to the Puerto Rican project?

A I believe I recognize in December 1962 but I am not sure enough to say straight out to you yes. There is a check for $6060 in December of 1962, December 4. That would have been right after I returned from Puerto Rico.

I can imagine that that was a check that was drawn to me to pay for those expenses because I was not otherwise compensated by this company.

But this is only conjecture. I would like to go back to the accountants and the checks to help me recall but from the book I don't have enough recollection to be able to state right out to you.

There are other places that checks are drawn to me here. I must presume that it had to do with this activity in Puerto Rico because I wasn't being paid by this company otherwise.

Q Would you identify in the period November-December, 1962, the checks that are drawn to your order and to which you are now making reference by page of the journal and by check number?

A By page, page 12, check No. 871, $1500. That was November 1962, apparently November 15.

On page 13, on December 4, $6060, check No. 893. That would have been November and December of 1962.

MR. MacCRATE: Your Honor, I don't propose to ask the witness to do this month by month and take the time of the Court and the jury in that way but I would like to ask with respect to the month of January 1963.

Q If you can give us the same information please, Mr. Shippee?

A Check No. 959, page 14, January 14, $119 and, on the same page, check No. 965 on January 26, $107.

Q Anything else in January of 1963?

A January?

Q In January.

A No.

Q Would you examine February 1963?

THE COURT: Could counsel approach the bench, please.

(At the side bar.)

THE COURT: I am prepared to direct this witness to remain available throughout the trial and I don't think there is any reason to expect that he wouldn't anyway but

it seems to me that this is wasting time. You may be attempting to prove a negative But if there is no evidence they spent any money, the jury and the Court and the defendant are entitled to assume they spent no money.

There was no testimony offered on direct examination of this witness that Prudential Connecticut spent any money in reference to this project if I remember the direct testimony correctly.

If you gentlemen want to agree as to a schedule to be prepared from that exhibit it is perfectly all right with me but I am not going to go through this month by month on dollar items where there is no proof of any money on direct examination that I recall.

Was there, Mr. Farrell?

MR. FARRELL: No.

THE COURT: If he didn't prove he spent money the defendant and the Court could assume he spent nothing. If you want me to direct the preparation of a schedule from this book or want to prepare your own schedule from the book based on your pretrial discovery I am perfectly willing to do it but to take this and stretch it out examining him as to every check over a two or three-year period --

MR. MacCRATE: I have no intention of doing

that.

THE COURT: What do you want to do?

MR. MacCRATE: Just the month of February, the same information.

THE COURT: All right, let us stop at February. But I am leaving the door open for any of you to cull from this book any expenditures you think have a bearing on your side of this case. But I say again, in the absence of evidence that money was spent, the presumption is nothing was spent.

If plaintiff wants to rely on having spent money they have to prove they spent it.

MR. FARRELL: That is right, your Honor.

(In open court.)

BY MR. MacCRATE:

Q Mr. Shippee, turning to the month of February, 1963, can you identify any expenditures during that month that related to a Puerto Rican project?

A I can't identify specifically. I received two checks during that month, on page 15, 991 -- I am sorry, 992, of $75 and check No. 1004 for $159.

Q Mr. Shippee, I believe you testified that in November of 1962 you offered to Mr. Anderson when the project had an asset value he would share in the assets.

Is that correct?

A I don't know about the word asset but it is generally correct that he would share in the equities of the partnership.

Q Do you remember testifying in this action in October of 1967?

A You can refresh my recollection.

THE COURT: He is asking you if you remember that you did testify under oath in this action at that time.

THE WITNESS: He said in 1967. I am not sure that was the year.

THE COURT: But some time you did?

THE WITNESS: Yes, on more than one occasion.

THE COURT: All right.

Q I show you a copy of a transcript dated October 30 and November 1, 1967.

Does this refresh your recollection?

A Yes, it helps me.

MR. FARRELL: Could we have the page and line when you ask the question, Mr. MacCrate?

Q Page 13, line 32:

"Q You made a specific offer to Mr. Anderson, did you?

"A Yes. In the context of his reply he

said that if there is anything for me in it it has to be shared with Mr. Wright because we share, we are partners in these things. That was the context of Mr. Wright's interest.

"Q What specifically did you offer at that time to Mr. Anderson?

"A There was no specific amount."

MR. FARRELL: Will Mr. MacCrate read the rest of that answer?

MR. MacCRATE: I will return to it in a minute.

MR. FARRELL: May we have it right now?

THE COURT: Wait a minute. Let's not have any raised voices here.

Will someone hand the Court the original of that. I will make a ruling as to whether Mr. MacCrate shou,d read the rest of the answer.

Is the original on file?

MR. FARRELL: Your Honor, this is not our deposition, I don't know.

MR. MacCRATE: It is, your Honor.

THE COURT: I think at least through line 11 ought to be read.

Q "If there were to be some share the amount of

of the share would be based on hindsight as to the degree of performance and the contribution made. This was applicable to all the team members."

A That is true.

(Continued on next page.)

Q Now, did you not also testify and this is on page 135, line 7 -- I will have to go back to line 4.

THE COURT: Does your office have the original of this transcript that you're reading from?

MR. MacCRATE: No, we do not.

THE COURT: Our court records does not seem to have it documented. It is not unusual because sometimes they misplace them.

MR. FARRELL: Your Honor, I believe we have in our file back at the office another copy. I will be glad to make it available.

THE COURT: Any depositions that are going to be used during the trial, the Court would like to be in possession of a copy unless the original has been filed in the clerk's file.

MR. FARRELL: We will endeavor to do that. I will try to get Mr. Shippee's transcript right away.

THE COURT: All right, let's go forward.

Mr. MacCRATE: I regret, your Honor, I was misinformed. I thought it had been filed.

THE COURT: Well, it might have been but sometimes in our clerk's files over the years papers do get misplaced and misfiled.

Q Commencing at line 4, on page 135:

"Q Wasn't Mr. Anderson, prior to that time, completely available to you?

"A Yes, he had been always .

"Q So there was really no change in his availability?

"A Quite a change, because until that time our communications had been almost completely altruistic. Almost a father-son relationship. At that time it was a business relationship and"--

MR. MacCRATE: Mr. Farrell, would you give me the last two words of that line?

MR. FARRELL: Yes. "And he was."

Q (Reading):

"A -- and he was specifically offered and when the processes had an asset value, he would share in the assets.

"Q Did this offer to Mr. Anderson and his acceptance to that offer which I understand you to now just referred take place in the fall of 1962 or at some later time?

"A I would say before I went to Puerto Rico at the end of November almost at that same time.

"Q You made a specific offer to Mr. Anderson, did you?

"A Yes."

That was where I read before.

You did so testify in 1967?

A I would accept that that was a good description of my present recollection also.

Q Mr. Shippee, did you regard this as a financial obligation of Prudential Connecticut?

A As one member of the partnership. It was a financial obligation of the whole partnership.

Q Mr. Anderson and Mr. Wright were members of that partnership?

A Yes. They were invited.

THE COURT: What is this partnership we are talking about?

THE WITNESS: This is the PROPCO, the Puerto Rican chemical complex.

Q Now, did you make any similar offer before you went to Puerto Rico to Mr. Learned or to any other officer of Phillips?

A No.

Q To him personally?

A No.

Q Or to any other officer of Phillips?

A No.

THE COURT: Or employee of Phillips?

THE WITNESS: No.

THE COURT: Let's not get involved in whether somebody is an officer or an employee.

Q Was Mr. Willey also a member of this partnership?

A Yes.

Q Was this a private and personal arrangement among you and Mr. Anderson and Mr. Wright and Mr. Willey?

A No. Mr. Willey was president of Prudential Oil Corporation and I was chairman and as I previously testified, we stipulated that our shares would belong to Prudential Oil Corporation of Connecticut.

Q Now, when did you make that stipulation with respect to Prudential Connecticut?

A At the time. That was the corporation.

Q Where was this stipulation recorded?

A In all of our discussions with Mr. Anderson and Mr. Wright, including the discussions regarding Heritage Corporation and the other ventures.

Q But there was nothing on paper that reflected this stipulation at that time in 1962?

A Not at that time. I am recollecting that somewhere in my memory it is in writing and it may have been

jplt 5 Shippee-cross

at a later time but that was our practice. At all times.

Q Wasn't that in 1966 after Prudential Connecticut disappeared and no longer existed?

A It is my testimony that that was our practice at all times.

Q That was your practice at all times?

A Yes.

Q But when you had a private partnership, your interest belonged to Prudential Connecticut?

A In natural resources, yes.

Q In natural resources. And when you refer to natural resources, you are referring to drilling for oil?

A No. For the general petroleum industry, petrochemicals.

Q Is there any other example of an undertaking that you entered into in 1962 that involved the industry generally and not exploration and drilling for oil?

A Yes. The predecessor activity was in the mining of pearlized ore as a substitute for diatomaceous earth which was only found in California, and we wanted to mine pearlized ore in West Virginia and we wanted to mine that for the east coast use of Pfizer Chemical. We called upon Mr. Wright and Mr. Anderson's help, because they were then connected with Ventures, Ltd. in Connecticut, which is a mining

company and we rented space in New London, Connectict and we were well advanced.

We already ordered the smelting equipment and boilers. We were well advanced into it when we abandoned it, but that would have been another example of the same arrangement.

Q An extraneous industry of mining similar to drilling for oil.

A Correct.

Q In connection with the action taken by you in October and November of 1962 and your trip to Puerto Rico at the end -- which you did at the end of November, did you not, and you came back the first day of December?

A Yes.

Q Did the board of directors of Prudential Connecticut authorize that action?

A Yes.

Q When did they authorize that action?

A I believe close to Christmas time in December.

Q So it was subsequent to the trip to Puerto Rico?

A I would use the word ratified.

Q Now, you reported to the board of directors on December 2nd, did you not, that you were investigating

a deal in Puerto Rico whereby the corporation would act as a vehicle to establish petrochemical plant, didn't you so report on the 2nd of December?

A It was my practice to report to the board upon the return of any such trip and I presume that I did. If you have something to refresh my recollection, it would help me.

Q Do you have any recollection of the board's reaction to any such report by you to them early in December, 1962?

A Yes.

Q What was their reaction?

A Favorable.

Q Weren't you in fact cautioned that there could be serious pitfalls in such an undertaking and that no affirmative move should be made by you without adequate discussion by the board well in advance?

MR. FARRELL: Your Honor, I object unless --

THE COURT: I will overrule the objection. He can answer it. He was or he wasn't or he doesn't remember. No speeches.

A I don't remember.

Q Mr. Shippee, I show you Defendant's Exhibit 316 for identification.

MR. MacCRATE: Mr. Farrell, it is DX 43 of December 2nd.

MR. FARRELL: Thank you.

MR. MacCRATE: 1962.

Q I ask the witness to examine the paragraph at the top of page 3 and ask him if that does not refresh his recollection as to the caution from the board.

A Please repeat the question.

MR. MacCRATE: Mr. Reporter, would you read the question?

(Question read.)

THE COURT: Frame it again, please, Mr. MacCrate.

Q Weren't you in fact cautioned that there could be serious pitfalls in such an undertaking and that no affirmative moves could be made by you without adequate discussion by you and the board well in advance?

A By a single member of the board, yes. But not supported by the board in any degree. I would like to read the whole paragraph, if I may.

THE COURT: Don't do that. You'll have an opportunity to have redirect examination.

Q Who was that member of the board?

A Mr. Leonard Warrener.

Q Did you say anything to the directors at that meeting about any obligations that you had assumed on behalf of Prudential Connecticut?

A For this project?

Q Yes.

A No, not included in the minutes of this meeting.

Q So that it is fair to say that nothing you had done prior to December 2, 1962 had created any obligations for Prudential Connecticut, is it not?

A Concepts with our currency. Not cash. We were dealing in ideas and ideas that worked. That was why we were told that we were brought into the concept. No one looked to us for our money. We looked at Phillips for this backing but they generally looked to us for concepts, not currency.

Q Now, Prudential Connecticut was in fact operating at a deficit at that time, was it not?

A In the normal accounting sense, yes. But in insurance and in oil we have depletion and you override royalties, all our overriding royalties carrying over one dollar in our balance sheet and yet they may exceed $75,000,000.

Q Today, but they didn't exceed $75,000,000 at

that time.

A They could have exceeded $800,000 as I noted in recent material. All I'm saying, that a cash flow company, and a company that owns resources mostly in the ground have different accounting systems.

Q There is a reference to the fact of an operating deficit in the third paragraph of page 1 of those minutes, is there not?

A Yes. That was a normal procedure and it is still a normal procedure for the present company, even when there are present assets. The tax advantages are well known.

THE COURT: No speeches about tax advantages. Just listen to the question and answer it.

A It had to do with deficits and we practiced deficits. They were not operating deficits to the extent that tax advantages of oil create them. It is called depletion.

Q Mr. Shippee, did you discuss with Mr. Van Hyning in Puerto Rico --

MR. FARRELL: Excuse me, Mr. MacCrate.

Your Honor, I would move that Mr. MacCrate offer those minutes now. He's read from them. He's questioned the witness about them.

THE COURT: I won't direct him to offer the minutes but you may offer them on redirect examination if you wish to do so.

Q Did you discuss with Mr. Van Hyning in Puerto Rico at the end of November of 1962 your concept for a project?

A No.

Q Did you have any conversation with Mr. Van Hyning at that time?

A Merely courtesy.

Q Did you describe what you had in mind at that time to anyone?

A To Mr. Durand and Mr. Jesus Diaz-Hernandez. They were the directors.

Q And you told them it was for a gasoline refinery, that you were making plans?

A No.

Q Didn't you say that there was no other way to attack the problem?

A A flexible refinery which could begin with one and switch to the other.

Q But essentially only an oil refinery for several years?

A No, essentially a flexible refinery for several

years so that a core plant could be the mother hen for a series of brood chicks that would become the satellites and build a chemical industry in Puerto Rico.

Q In your conversation in Puerto Rico with Mr. Durand and with Mr. Diaz-Hernandez at the end of November, 1962, this is what you said to them?

A I said much more than that to them.

Q But you said that to them, that you had just told the Court and jury?

A Yes.

Q Now, during this visit, didyou make a written presentation of any sort to EDA?

A I don't recall that I did.

Q It was entirely oral?

A As far as I recall, my visit there was oral.

Q Did there ever come a time when you made a written presentation to EDA in Puerto Rico?

A In May of 1963 the application which was outline of the project, the application for the import quota was sent to Mr. Diaz-Hernandez.

Q In New York?

A I believe to their New York office, yes.

Q You sent a copy of P-215 to Mr. Diaz-Hernandez in May of 1963?

A Yes.

Q And you did that to him in New York.

Now, did you also send a copy at that time to anyone in Puerto Rico?

A It is improbable. I don't think so, but I don't actually know. We normally made our deliveries to the New York office.

Q And this was a hand delivery that was made?

A I don't know. Their office was near ours. It could have been, I just don't know. They were included on the distribution.

Q When you say "they," Mr. Diaz-Hernandez or who was it?

A Mr. Diaz-Hernandez of EDA and the New York office was included on the distribution.

Q What was the distribution to which you refer? Have you a list that indicates where copies of this were sent at that time?

A Not to my knowledge.

Q Well, upon what do you base your statement today that the distribution was made?

A All of the independent parties received copies, including the financial people, of course EDA, Mr. Chapman had multiple copies, I believe three. Mr.

Anderson, Mr. Wright, officers of Prudential Oil, also Mr. Young.

Q During December 1962 you had suggested that EDA write a letter to you, did you not, confirming interest in your project?

A I believe Mr. Young sought that letter.

Q Did you not say in P-83, the report that you made to Mr. Anderson at the end of the month that that letter was being prepared?

A In January, I believe January something.

Q Mr. Shippee, please answer my question.

MR. FARRELL: Your Honor, I object to it. He hasn't shown him the exhibit. He asked him about an Exhibit P-83 which I am sure means less to the witness than anything.

THE COURT: If the witness doesn't understand the question he may say so. He knows if he cannot answer the question without looking at P-83, he understands he can see that.

Frame another question please, Mr. MacCrate.

Q Mr. Shippee, I show you Plaintiff's Exhibit 83 and invite your attention to the second paragraph of the letter and ask you whether that does not include a reference to a letter being prepared by EDA?

A I don't believe it does. I would like to read the whole paragraph. It has to do with a public

hearing in Washington of Mr. Durand and the letter was for the Washington hearing. The EDA was preparing for a hearing for the Puerto Rican project and Mr. Durand, the Administrator of EDA is coming from Puerto Rico on January 8, 9 and 10 to meet with Mr. Udall regarding the oil import.

This letter was for that meeting in Washington. There was another letter.

Q Well, would that be the letter that you said was in preparation?

A That is not the same letter I believe. This was for the meeting of Mr. Durand in Washington.

Q Did you seek a letter of support from EDA?

A I believe Mr. Young sought the letter to include in the application for import and later Mr. Durand spoke in January in connection with this meeting directly to Mr. Anderson and assured him of the support of the Puerto Rican Government and we elected to keep it that way because we were seeking support of State on the use of Venezuelan oil and this political aspect was left to Mr. Anderson as to how the support of Puerto Rico would be expressed in the interest of how the State Department would support the application.

There was another communication between Mr.

Chapman and Mr. Anderson on the political aspect because the President Bettencourt of Venezuela had formerlly been a house guest of the Governor of the Commonwealth --

THE COURT: Please, not about house guests. I have to finish this trial some day. If you don't give concise answers it is going t take much too long.

Put a new question.

Q Mr. Shippee, is it not the fact that at no time did you ever obtain a letter of support from EDA?

A A letter of support from EDA would include --

Q Can't you answer that yes or no?

A No, I can't because you are referring to a particular letter to put in an application and we elected not to use it.

Q I just said did you get a letter of support from EDA?

A Yes.

Q What letter of support did you get from EDA?

A We have several letters of support from people in EDA on the project directed to us.

Q You mean you corresponded with them about the project?

A Correspondence in the form of letters.

Q But you never received a letter that you can

exhibit to any authority as part of the evidence of support that they were prepared to support you in seeking an oil import quota?

A We did not want that letter because it was so sensitive and Mr. Anderson and Mr. Durand assured each other and Mr. Anderson will be a witness.

Q The other day you testified, I believe, Mr. Shippee?

THE COURT: Please don't summarize prior testimony. That is dilatory also. Just ask him simple declarative questions and you, Mr. Shippee, give simple declarative answers and no speeches, nothing about anybody's house guests or anything like that.

Just answer the question yes or no if you can and please do so and if you cannot do so, give at least a concise answer addressed only to the question.

Frame another question.

Q Mr. Shippee, you testified --

THE COURT: Please don't summarize prior testimony. Just ask him a fact question: Is it true that such and such did or did not happen? Just ask him that kind of question.

MR. MacCRATE: Your Honor, I respectfully would ask him a question to identify a subject matter.

THE COURT: All right, tell him what subject matter.

Q You testified with respect to a concept, did you not, for a project in Puerto Rico?

THE COURT: Yes, he did. Everybody in the courtroom knows that.

Ask another question.

Q You indicated that EDA would undertake to make good losses, did you not, under your concept?

MR. FARRELL: I object.

A No.

THE COURT: Overruled but he has answered.

I want to say one more thing. Don't answer when your attorney is attempting to make an objection because if the objection is sustained you are not supposed to answer.

Q Did you at any time ask EDA to provide a guaranteed return on investment?

A The concept of the core satellite, which was our principal contribution in making it work in that a quasipublic utility aspect of the company would be they must supply the feedstock to any chemical company coming into the island which they required even to the extent that if the feedstock could not be made at a profit, that

Commonwealth would see that the core got a return on its money and we talked in terms of at least 6 per cent on the sale of any feedstock and that was the quasipublic utility feature. But that was not in any degree related to profits or losses of the core. It was only in the course of making a feedstock for a particular chemical company which the Commonwealth invited and needed raw material in order to manufacture.

Q You wanted an investment guarantee for a piece of the business, not all?

A Not at all. That is not just what I said.

Q You had a conversation with Mr. Norton in March of 1973, did you not?

A Yes.

Q You explained to him some of the problems that you had encountered, did you not?

A We were asked by EDA --

THE COURT: Will you answer the question I explained problems or I didn't explain problems?

A I explained to him concepts.

Q Did you explain to him the problems that you were having with EDA?

A No.

MR. MacCRATE: Norton deposition, page 51,

line 6.

Your Honor, I would like to read a question and answer propounded to Mr. Norton on his examination before trial on March 29, 1973 in this action and ask the witness if this does not refresh his recollection.

MR. FARRELL: I would object to it.

THE COURT: I will sustain the objection to that procedure. However, the deposition which does not seem to have been docketed, may be marked for identification and may be shown to the witness and he may be asked to look at it and read it to himself and then he may be asked if it refreshes his recollection.

But the deposition itself may not be read as part of the cross-examination.

(Defendant's Exhibit 318 was marked for identification.)

Q Mr. Shippee, I show you Defendant's Exhibit 318 for identific ation and invite your attention to the question and answer of Mr. Norton at lines 6 to 18.

I ask you if that refreshes your recollection regarding a conversation with Mr. Norton?

A Who is "he"?

THE COURT: I was about to ask the same question. Who is Mr. Norton?

THE WITNESS: I know who Mr. Norton is. There is a "he" in here.

Q The "he" is Mr. Shippee, is it not?

A Yes, I find out that it is. I would need to take the answer before before I can answer the next question.

THE COURT: He is just asking whether this is refreshing your recollection.

THE WITNESS: Yes.

Q What did you tell Mr. Norton in March of 1963 that you now recall?

A I told Mr. Norton on the telephone that we wanted a meeting because EDA had asked for an outside opinion of a new concept that we had described to them. I briefed him on the telephone and he arranged for a meeting a few days later in his office with Mr. Jensen and Mr. Norton.

THE COURT: Who is Mr. Norton?

THE WITNESS: He was A. D. Little & Company as well as Mr. Jensen, Mr. Irizarry accompanied me to the meeting along with Mr. Young.

Q Did you refer to the difficulty you were having with the EDA in that conversation?

A No. We had no difficulty with the EDA.

We haven't referred to it and it didn't so indicate there.

Q Did you suggest in words or in substance to Mr. Norton that EDA was asking you and your group to put in a refinery without having the utility status which you felt was important?

A No. I just read --

THE COURT: Look, you are not to quote what was just shown to you. That was shown to you solely for the purpose of helping you refresh your recollection. An attorney can show the witness anything that will help him refresh his recollection including a copy of the Herald Tribune and you are not to read it into the record.

Look at it and see if it refreshes your recollection.

Do you want to look at it again?

THE WITNESS: No, thank you.

THE COURT: Reframe the question please, Mr. MacCrate.

Q Mr. Shippee, did you say to Mr. Norton in words or in substance that EDA was asking you and your group to put in a refinery without having a utility status which you thought was important?

A No.

Q Did you say to him in words or in substance that in order to have a 70 per cent stock for a petrochemical complex, that you could not live without getting the utility status of return on investment guarantee?

A No.

Q Some time in December 1963 you began the preparation of a brochure, did you not?

A Yes.

Q You put it in the form of an application for an import quota?

A Correct.

Q Did you have any precedent from which to work in preparing that?

A Yes.

Q What was the precedent?

A Mr. Chapman gave us the outline as supplied by the Oil Import Quota Board in preparing an oil import quota application.

Q You worked from an outline that Mr. Chapman provided to you, is that correct?

A That was a regular outline issued by the Oil Import Administration in the form of a Government document that we followed in preparing the application, yes.

Q Did Mr. Chapman tell you what he thought should

or should not be included in the application?

A We talked to Mr. Cordell Moore who was the person in charge.

Q In December of 1962 you talked to Cordell Moore?

A I can't be sure of the date but during the preparation of it we did get guidance on the format.

Q Yesterday you told us about visits to Washington where you met Mr. Chapman. You didn't put any in December of 1962, did you?

MR. FARRELL: Objection.

THE COURT: Sustained.

Q You were not in Washington on this project in December 1962?

MR. FARRELL: Objection.

THE COURT: Overruled.

A No, it would have been in the subsequent period. But that particular was a telephone call with Mr. Moore as I recall. That was not a visit. You asked me in regard to the application, the format of preparing the application and I was responding.

We had help from Mr. Moore. We also had guide lines issued by the Oil Import Quota Board on how to prepare it.

Q You had these in December 1962?

A I can't recall. Either December or January but this was a busy period, working on the application. It may have been December.

Q When you say we had a telephone call, did you, Mr. Shippee, speak with Mr. Cordell Moore in December 1962 or January 1963?

A No.

THE COURT: Who was the we in this case?

THE WITNESS: I believe Mr. Young. It was Prudential Oil Corporation.

Q Well, you believe it was Mr. Young. Do you believe it was anyone else?

A I know that Prudential Oil Corporation had telephone communication with Mr. Moore on the format of the application. I believe it was Mr. Young because he worked on it directly. I am not sure.

Q Who else in Prudential was working on it and may have had a call to Mr. Cordell Moore?

A Mr. Little and Mr. Willey.

Q But you believe it was Mr. Young?

A Yes.

Q Mr. Shippee, I show you Plaintiff's Exhibit 214 and I ask you if you will examine that notebook and dis-

regarding the handwritten notations that we examined together the other day, and the other amendment insertions, is that the brochure that was compiled in January of 1963?

A The date is December of 1962 and January 1963. The contents were compiled in December 1962 and this first page has January 1963 on it. But this was done in December, 1962.

Q All that is in that book other than the changes -- I am going to come to that in a minute -- was in the book by the end of December of 1962?

A That is my recollection.

(Continued on next page.)

Q Now, between December of 1962 and May of 1963, is it your testimony that the only changes that were made in the brochure, are the ones that are recorded as additions to P-214?

A No.

Q Looking at the changes reflected on P-214, there is a change on the cover, is there not?

A Yes.

Q And there is a change on page 4 of the report in brief?

A Correct.

Q And there is a change under "Core Plant" on page 1 a grammatical change of a few words in pencil?

A Which chapter is that?

Q "Core Plant."

THE COURT: Do we have to spend time on grammatical changes?

MR. MacCRATE: Your Honor, there are, by my count, seven changes in this and I wanted to identify them. I believe this is important.

THE COURT: Can it be conceded there are seven pencil changes?

MR. FARRELL: I don't know, your Honor. I never counted them.

Q Can you find the section entitled "COre Plant"?

A Yes.

Q Did you find it?

A That is Chapter II.

Q Do you find a pencil notation of a grammatical change?

A It is just edited changes of spelling.

THE COURT: You say it is spelling and it is grammatical. Can't we get to the bedrock? Let's go forward.

Q Do you see a chapter headed "Support of the Commonwealth"?

A Chapter III.

Q Has a change been made there?

A One deletion.

Q [illegible]at has been deleted?

A [illegible] summary of disposition in and of the support of the Commonwealth government is contained in their recent letter of the sponsoring group.

Q Since there was no letter to the sponsoring group that has been deleted.

A No, that was an agreement between Mr. Anderson and Mr. Durand at their meeting, not to include it in January

and it was therefore taken out.

Q Would you look at "Commercial Implementation"?

A Chapter IV.

Q Is there an insertion there?

A Yes, there is.

Q On page 3?

A Correct.

Q Of the paragraph.

A Yes.

Q Under "Officers and Directors," are there changes in the descriptions with respect to two individuals?

A Correct.

Q And under "Engineering Planning," there are also some typographical changes?

A Chapter V, yes.

Q As you leaf through it, have you seen any other changes on P-214?

A By pencil or pen mark, no.

Q Do any of the changes that we have just reviewed reflect suggestion of Mr. Fischbeck?

A Yes.

Q What change or changes reflect the suggestion of Mr. Fischbeck?

A All of them.

Q Those suggestions were made by Mr. Fischbeck when, and to whom?

A To myself and to Mr. Young at a meeting in February and a meeting in March, but I can't identify the particular ones at the particular time, but we all worked on the final chapter of this book. We, including Mr. Young, Mr. Shippee, Mr. Fischbeck.

The corrections, the book with the corrections, were then turned over to Phillips for copying and reproduction.

Q These corrections were all made before you delivered P-214 to Mr. Holland?

A In May of 1963, I believe so, that would be my recollection.

Q Well, Mr. Shippee, didn't you testify that you gave P-214 to Mr. Holland in February of 1963?

A Could you refresh my recollection as to the date?

THE COURT: It is 314 we're talking about?

THE WITNESS: 214.

Q Page 209 and 210 of the transcript:

"Q Did you deliver that brochure or another copy of that brochure to Phillips?

"A Yes.

"Q About when did you do that?

"A About February, 1963.

"Q To whom in Phillips do you claim it was delivered?

"A Mr. Holland, as I recall."

And then again several pages later at 215, speaking about P-214:

"Q When did you give this book to Mr. Holland?

"A In February or March, 1963."

THE COURT: If you read it, please read "question," and then insert the word "answer," so the reporter won't misunderstand.

A I would agree with that schedule. These books remain. I had one, Mr. Young had one, Mr. Fischbeck had one, Mr. Holland had the copy from which the print copy would be made. We worked in February and March. The final printing was done in May, I believe. But this work copy under preparation would have been in that period and that would refresh my recollection.

Q You gave this work copy to Mr. Holland in March -- February or March of 1963?

A That's my recollection. Yes.

Q When you gave it to him, what did you ask him to do?

A He was to reproduce ten copies, originally.

Q When you say reproduce, did you tell him how you wanted it reproduced?

A No. As I recall it was the suggestion of Mr. Fischbeck -- we were having difficulty because so many people were involved in the financing aspects and the technical aspects that we didn't have enough copies. He said,"Give it to us and we will make copies."

I said, "Who?"

And he said, "Mr. Holland."

I was introduced to Mr. Holland and he said he made ten copies. It later became a finished document of fifty copies but the original suggestion was ten copies.

Q Did Mr. Holland arrange for the typing of the document?

A Yes.

Q And it is your testimony that the typing that was done to transform P-214 into a finished document was done through the services of Mr. Holland?

A As I recollect, although it is also my recollection that some work was sent out to a typesetting firm, because I think in an earlier examination I saw an invoice for some typesetting that we paid. But it is only vague in my mind. It was turned over to them to reproduce. The exact details I'm not totally familiar with.

Q But it was Mr. Holland's responsibility as far as you were concerned, to prepare a typed copy and then to reproduce a typed copy of the entire document?

A It was an offered service and not a responsibility and we gladly accepted it.

Q This typing took place over the period March to May of 1963?

A Yes, pages were changed as new thoughts were dropped in and it was a series of compiling and bringing it all together.

Q I believe you identified Defendant's Exhibit 215, that I show you now, as the final form of the brochure, is that correct?

A Correct.

Q Is it your testimony that the pages, all of the pages that appear in this brochure, were reproduced by Mr. Holland?

A With his help. I don't know if the word "all" is appropriate, but with his help it was reproduced.

Q Well, didn't you tell us the other day that you got back for collation all of page 1, all of page 2, and then someone at Prudential put it together?

A Correct.

Q Phillips didn't -- or Mr. Holland didn't

arrange for any collation?

A I didn't use -- well, perhaps I used the word collation. The separators were supplied by us and the binders. Now, whether it was delivered collated or all page 1 together, I didn't see the actual delivery.

Now, it might have been collated. I was under the impression that it was just delivered in twenty-five units of each page but they might have been collated.

Q Well, Mr. Shippee, if you take the work copy, P-214 and then direct yourself to what you describe as the brochure in final form, are all of the pages reproduced in the same manner?

THE COURT: What is the number of the second booklet?

MR. MacCRATE: P-215, your Honor.

THE COURT: Thank you.

You mean in the same manner, mechanically?

MR. MacCRATE: The same mechanical manner.

A It doesn't appear so.

Q That there are differences in some of the pages from the work copy and the final copy?

A This appears to be a different way of reproduction than this. This appears to be typewriter and this appears to be an offset and I'm not an expert. But there is

a difference in the appearance.

Q Well, turning to the blue covered booklet, "National Petroleum Refiners Association," has that been photo offset?

A This insert appears to be one of a general supply, it appears to be the same supplied by the National Petroleum Refiners Association from Tulsa of their fall meeting.

It doesn't appear to be a reproduction, but it appears to be one of multiple copies.

Q So that is one section of this book that was not reproduced by Phillips?

A No, I'm wrong, because there was a staple in this copy here where there is a hole. Now, in this copy there is no hole, but there is a picture of a staple. So it must have been photo offset because a staple picture came through, apparently. I can't be sure.

Q How do you explain, Mr. Shippee, the difference in the appearance of the pages in Chapter V from the pages in Chapter I or II?

A Let me try to look at it. This apparently is a typewritten page and this is faded and apparently was photo offset of some kind.

Q Well, the first page is --

MR. FARRELL: Excuse me. Go ahead, ask your question.

Q The first pages were also photo offset, were they not?

MR. FARRELL: Your Honor, I object to any further procedure down this line. I think it is simply wasting time.

THE COURT: If he doesn't know, he can say so.

A I don't know.

Q Do you see any difference in the texture of these pages as you feel them?

A Yes. It is apparent that that is sort of brown and fading and these are white. That's the characteristic of an offset after several years.

Q But you don't see any of that browning on the earlier chapters of the book, do you?

A Yes, I'm afraid I do. It is there.

Q Now, you're pointing to the back of the back.

A This is Chapter V, "Engineering." It appears to me to be different in processes.

Q Referring to the Parsons Company study, is that not on different textured paper than the preceding pages of the report?

A I pointed out again that this came out of a sort of looseleaf folder which had holes in it when it was taken out. But now the holes are shown by picture. So it had to be a reproduction by photograph otherwise there would be holes in it.

Q It is your testimony that however it was done Phillips -- or I should say Mr. Holland of Phillips did it all?

A I delivered it to him to be done and he delivered it back to us and that's all that I'm sure of.

Q He delivered it back to you on or about May 28th, is that your testimony?

A Subject to recollection, it was towards the end of May that it was delivered and I recall we distributed it within a day.

Q Didn't you testify that it was the day before?

A Within a day.

THE COURT: When you're finished with that topic, if you are, I will take a brief recess. Is it convenient to suspend at this time?

MR. MacCRATE: Yes, it would.

THE COURT: Members of the jury, we will take about a ten minute recess.

(Recess.)

(In open court - jury present.)

THE COURT: Proceed, Mr. MacCrate.

Q Returning, Mr. Shippee, to July of 1963, did you and Mr. Young and Mr. Coan and Mr. Chapman and Mr. Anderson meet in Mr. Anderson's office on July 2, 1963?

A Yes.

Q At that meeting, did you request Mr. Anderson to convince Phillips to sign the application for an oil import quota?

A The word "convince" bothers me. We asked Mr. Anderson to see that the request I had made to Mr. Fischbeck for Phillips to sign the application was in fact being carried out.

Q Did Mr. Anderson agree to take care of the matter?

A Yes.

Q On the following day you were involved in a serious airplane accident in Rochester, New York?

A Yes.

Q On July the 3rd?

A Correct.

Q In the week following the accident, you called

Mr. Anderson on the telephone?

A I talked with him on the telephone. I believe he called me.

Q And he told you that Phillips would sign the application and that everything was all right?

A He told me not to be concerned about the business matters, that they were going well.

THE COURT: The question was, did he mention Phillips at all in that discussion?

THE WITNESS: I asked him about Phillips and he responded that it was going well, that I should get well and not be concerned about the business matters.

Q Well, didn't you testify -- this is at page 320 of the transcript, line 7 -- excuse me, line 9:

"A In the following week I called him and asked him how the project was going. He told me that Phillips would sign the application and that everything was all right, I shouldn't be concerned."

A That was the next week, I believe.

Q But the week following the accident?

A I'm sorry, I presumed that you were talking about the first conversation after the accident. Yes.

Q But the week following the accident you called Mr. Anderson?

A Correct.

Q And that is what he told you at that time?

A Correct.

Q Now, were you able then after this accident to carry on with the petrochemical project?

A Yes.

Q And you were capable of handling any necessary negotiations and continuing to pursue it and carry it on?

A Yes.

Q Isn't it a fact, Mr. Shippee, that you gave testimony about this very matter in December of 1965?

A In which regard?

Q With respect to your ability to carry on your activities.

A To whom?

Q Do you have any recollection of giving testimony on that subject in December, 1965?

A Can you refresh my memory?

THE COURT: You mean by that you don't remember whether you did or not?

THE WITNESS: I don't remember what time frame it is in.

MR. MacCRATE: I ask that the transcript that

I have handed the clerk to be marked 319.

THE COURT: Marked for identification.

xxxx (Exhibit D-319 marked for identification.)

Q I show you Defendant's Exhibit 318 for identification, Mr. Shippee, and ask you if that refreshes your recollection as to giving testimony in December 1965?

A This is a suit by Nathan M. Shippee --

THE COURT: Just answer the question.

A Yes, it does.

Q Is the copy of the transcript before you a copy of a deposition that you gave on December 29, 1 965?

A Yes.

Q Turning to the last page, page 25, did you verify it on February 18, 1966?

A Correct.

Q On page 17 --

A Yes.

Q -- line 8, did you not then testify:

"I wasn't capable of handling the negotiations or continuing to pursue it. I lost all ability to concentrate and initiate and carry on the project which demanded a lot of time and attention and creative thought."

Wasn't that your testimony in December of 1965?

A Yes, but I must look back to what time it referred to. I am just looking at this now for the

first time in several years.

I would like to have a chance to go back and look at my testimony as to what this referred to.

In July and August in the summer of 1963, I was convalescing.

Q On page 4 of the transcript beginning at line 5 there is an interrogation about July 2, 1963, is there not?

A Yes.

Q Could you be mistaken as to the day on which you had a conference in Mr. Anderson's office?

A I don't believe so. This says on July 2nd as the date of the accident and I am uncertain that this is July 2nd or July 3rd. A calendar would fix the date if we have one for 1963.

MR. MacCRATE: I apologize, your Honor. I had a copy here and it got mislaid among the papers.

THE COURT: I am not clear as to the question presently before us.

MR. MacCRATE: I am looking for a copy of a 1963 calendar I thought I brought with me.

THE COURT: All right.

Q Mr. Shippee, if I were to tell you it was Tuesday, July 2nd, would that refresh your recollection?

A No. If you were to tell me that the record shows that the meeting in Mr. Anderson's office was on July 2nd I would say this is the next day, the following day. If it took place on July 1st, then this would be July 2nd. That is my question. It is one day after and I don't know if it is the 1st-2nd or the 2nd-3rd.

MR. MacCRATE: I ask the Clerk to mark this as the next exhibit.

(Defendant's Exhibit 320 was marked for identification.)

xx Q I show you a reproduction of a page from the New York Times of July 3, 1963. I ask you if that refreshes your recollection as to the date of the crash?

A Is this the date of the issue?

Q Yes, and you will note that the dateline on the story with respect to the crash is July 2, is it not?

A It would appear that the crash was July 2 and the meeting in Anderson's office would have been July 1.

Q Was Mr. Oscar Chapman in New York on July 1?

A Yes. If that was the date of the meeting, he was at the meeting.

Q With respect to the day of July 2, you spent that entire day in Rochester, New York, did you not?

A Yes.

Q This unfortunate accident happened that evening as you were returning to Westchester Airport?

A Yes.

Q Mr. Shippee, I hand you again Defendant's Exhibit 319 for identification, the transcript of your testimony on December 29, 1965.

I ask you if you were making a claim in the action at that time for lost earnings as a result of being injured in the accident?

MR. FARRELL: I object to that.

THE COURT: Overruled.

A I was making a claim for damages as a result of the accident.

Q Does it not appear at page 10, line 9: --

MR. FARRELL: I object to this procedure.

THE COURT: He may be asked whether he recalls testifying in a certain litigation the tile of which shall be stated and the date and read the question and read the answer and asked whether he gave such an answer in response to such a question.

I will permit the use of Exhibit 319 for identification for impeachment purposes.

Q Page 10, line 9:

"Q Mr. Shippee, are you claiming lost earn-

ings as a result of being injured in this accident?

"A Yes.

"Q How much lost earnings are you claiming?

"A I don't know exactly.

"Q Mr. Shippee, if you don't know exactly just tell me approximately how much and how you arrive at it and over what period of time you claim these lost earnings."

Then there follows testimony with respect to Impak Systems, is there not?

A Correct.

Q Did you give that testimony and give the answers that I have indicated at that time?

A I did.

Q Turing to page 14 after the interrogation with respect to Impak Systems was completed, on line 11:

"Q So then that would be one area of lost earnings which you claim?

"A Yes.

"Q Are there any other areas?

"A Yes.

"Q What is the next one?

"A All of my work was to take and develop

situations into operations and I took a situation in Puerto Rico to develop a chemical industry for the Commonwealth and I negotiated with the Governor and I had a franchise to do this. And I negotiated with Oscar Chapman, former Secretary --

"Q When was that?

"A 1962. And I negotiated with Oscar Chapman, former Secretary of the Interior and with Robert Anderson, former Secretary of Treasury and with Stanley Learned, President of Phillips Petroleum Company. And I received from Phillips Petroleum a contract to supply the crude oil and buy the chemicals and to supply the technical and operating personnel for a $60 million refinery in Puerto Rico and this contract was dated November 1962 and we were actively organizing the chemical complex in Puerto Rico in July of 1963 when the accident took place.

"I was not able to continue with it and the project has gone ahead without me.

"Q The project is going ahead without you?

"A Yes. It has since been concluded about three weeks ago and is now a $100 million refinery

and $500 million complex. It is now a $600 million complex in Puerto Rico. It was in the newspapers.

"Q Does it have a name?

"A Yes but I don't recall.

"Q You can fill in the name when you get this deposition to sign?

"A Yes."

A line is left for the insertion and there appears "Phillips Core Inc.", does it not?

A Correct.

Q "Q How much do you estimate approximately you lost on that deal, Mr. Shippee?

"A I don't have any way of calculating it. We are trying to. This is one of the indeterminates."

"Q If you give me a rough approximation now and fill it in more correctly when you get the deposition to sign so we can have something to work with",

and then there is a line left and there is a handwritten insertion.

Is this your handwriting, Mr. Shippee?

A I believe it is.

Q "One quarter of $6 million or $1,500,000.

"Q You can fill in the space.

"A For what?

"Q For how much you estimate you lost on this deal?

"A Yes.

"Q Mr. Shippee, can you tell me briefly how you would estimate your loss on the Puerto Rican oil deal which you were entering at the time of this accident, due to the accident?

"A Based on the value of the oil in Puerto Rico of $1.50 a barrel it would amount to $75,000 a day profit potential.

"On the other hand, based on operating a going business of $600 million refinery as a core plant for a chemical industry on a franchise basis in Puerto Rico, we would look for 10 per cent return on capital investment annually or $6 million per year.

"Q Will you tell me, Mr. Shippee, how you feel or estimate the accident caused you to lose this money or any part of it?

"A I wasn't capable of handling the negotiations or continuing to pursue it. I lost all ability to concentrate and initiate and carry on

the project which demanded a lot of time and attention and creative thought.

"Q I take it, Mr. Shippee, you were not the only person embarking on this venture?

"A I was the only motivator and chief negotiator and the originator. I was the chairman of the business and controlling stockholder.

"Q Did the negotiations finish and you say consummate into the finished product?

"A The negotiations which I was controlling grounded to a halt and the other interested parties, essentially the Commonwealth of Puerto Rico in my absence turned in other directions and completed without me."

Did you so testify in December of 1965?

A I did.

Q Did you make the handwritten insertions in the transcript on or about February 18, 1966?

A I did.

Q Mr. Shippee, between November of 1962 and January of 1965, did you ever have any conversations with Mr. Learned regarding the Puerto Rican project?

A In January of 1965.

Q But prior to that time you never had, had you?

A Not that I recall.

Q Yesterday you testified with respect to P-163, January 14, 1965, did you not?

A I did.

Q That is a copy of a letter from you to Mr. K.S. Adams, Chairman of Phillips Petroleum?

A It is.

Q You at that in January 1965 sent a carbon of your letter to Mr. Anderson and Mr. Wright but you made that a blind carbon, did you not?

A Correct.

Q There was no indication on the copy that went to Mr. Adams that you were sending a copy to Mr. Anderson and Mr. Wright?

A None.

Q Similarly, with respect to L-165, which is a letter of January 14, 1965 to Mr. Stanley Learned?

A Correct.

Q Did you at or about that time correspond with Mr. Wright regarding shares in the equity available in the petroleum chemical plant?

A Yes.

Q You wrote to him, did you not, that you proposed share and share alike in the petrochemical plant proposed

for Puerto Rico among the four principals, W.H. Wright, R.B. Anderson, E.J. Willey and N.M. Shippee?

A To share in the remainder after sharing with others, yes.

Q You identified those four as the four principals?

A Four individuals.

Q Did you not use the word principals in your letter to Mr. Wright?

A I may have but they were individuals as principals.

Q Shoftly after you delivered that communication to Mr. Wright, you had a response from him, did you not?

A I believe that is correct.

MR. MacCRATE: Mr. Farrell, I am going to inquire with respect to a defendant's exhibit on pretrial, D-187, dated January 28, 1965.

I ask that it be marked for identification.

(Defendant's Exhibit 321 was marked for identification.)

MR. MacCRATE: I understand that plaintiff's counsel do not have here a copy of the reverse side of the document.

THE COURT: They can use this copy here. You can continue and I will look at it later. Let Mr.

Farrell look on while you use the paper. That perhaps would make it easier.

That second sheet is intended or you can contend that is a photostat of the reverse side of the original, is that correct?

MR. MacCRATE: Provided to us by plaintiff's counsel, your Honor.

Q Defendant's Exhibit 321 for identification is a copy of a letter from Mr. Wright to you of January 28, 1965, is it not?

A Yes, it is.

Q On the reverse side there is some handwriting.

Can you identify the authorship of that handwriting?

A I believe it is my handwriting.

Q Will you read for me the three lines that appear opposite the notation 8/31/63?

A "Chapman to be quarterback. He will take care of Coan. RBA to take care of us."

May I look at the rest of that a moment, please?

(Continued on next page.)

Q After looking at the balance of your handwriting on the reverse side of the document, can you recall about the time that you wrote that on the reverse of D-321 for identification?

A In the area of January, 1965.

MR. MacCRATE: I offer 321 in evidence, your Honor.

MR. FARRELL: No objection.

THE COURT: Received in evidence.

(Exhibit D-321 was received in evidence.)

Q Now, at this time, in January of 1965, you were speaking in terms of share and share alike among the four of you, that would be twenty-five percent to Mr. Anderson, twenty-five percent to Mr. Wright, twenty-five percent for Mr. Willey and twenty-five percent for you, Mr. Shippee, is that not correct?

A In the residual after sharing with all of the other partners. Whatever the residual was we would share and share alike. It was the residual.

Q There came a time, however, when you suggested to Mr. Willey that his share should be reduced?

A Not in connection with sharing the equity, no.

Q Well, did you not write to Mr. Willey in

October of 1966 and suggest that instead of a twenty-five percent share, he should have only a fifteen percent share?

A I did.

Q And you suggested that Mr. Wright should have only a five percent share?

A I did.

Q And you suggested that Mr. Anderson should have a zero share?

A I reflected his suggestion.

Q And thereafter Mr. Willey wrote to you and suggested that he should have a twenty percent share, did he not?

A He negotiated between the twenty-five and the fifteen and left it open for discussion and this had to be in connection with the confrontation with Phillips.

Q You say he negotiated and were those negotiations concluded with an agreement?

A No.

Q Has there ever been an agreement with respect to the share of Mr. Willey of any claim against Phillips?

A No. The claim against Phillips is by the Prudential Company and if the Prudential Company ever receives a claim against Phillips, it will then compensate, Mr. Young, Mr. Willey and others who worked with us on the project, but

that would be a compensation to them after the claim is satisfied.

Q Do I understand the agreement with respect to share and share alike of twenty-five percent each among the four individuals has been terminated?

A No, that exists. If there ever were an equity claim on an ongoing basis, we would share and share alike. But Secretary Anderson and Mr. Wright would not associate themselves with litigation in order to assert our rights and Mr. Anderson said he would take no share in any settlement.

Mr. Wright left it open for a while and then said in the case of a suit involving a settlement, he would have no share in any compensation arising out of a claim.

Q What position has Mr. Willey taken in that regard?

A Mr. Willey has taken a position that he would like to be compensated if there is any settlement out of the claim and that he would like to be considered in the area of twenty percent, but he left it open and it was not a condition.

Q Did all of these conversations take place with you?

A I believe it is in letter form and you referred to the letter that I am recalling and if you refreshed my recollection, if I could look at it now, of Mr. Willey to me in answer to my letter to him --

Q His letter in October, 1966 merely said that he would suggest that he take twenty percent rather than the fifteen percent, did he not?

A It says more than that. You would refresh my recollection, if I could look at it.

THE COURT: Could we go to that after the luncheon recess? I don't mean to interrupt your train of thought, but I think this is a point where I would like to excuse the members of the jury.

Please return at a quarter to 2. The rest of you stand by momentarily.

(Jury left the courtroom.)

THE COURT: I have two questions I want to ask. The first is directed to Mr. Farrell and the second to counsel, generally.

I am going to ask a question on the record. I am going to ask you to answer it yes or no. If you don't want to answer it, I am not requiring you to answer it. If you prefer to answer it off the record, I will allow you to. My first question is this:

Are you familiar with and aware of the existence of Exhibit D-319 and its contents prior to the commencement of this trial?

MR. FARRELL: No, your Honor.

THE COURT: Was Chief Judge Edelstein familiar with it at any time during the pretrial proceedings in this case which he had?

MR. MacCRATE: Not that I am aware of your Honor.

THE COURT: You didn't know about it until you got it?

MR. FARRELL: No.

THE COURT: I think that was a reasonable answer and your firm was not affiliated in that trial. Records of this court show that this Exhibit D-319 is the deposition of Mr. Shippee, the witness here, taken pursuant to stipulation by other attorneys who were not involved in this litigation on December 29, 1965, in a litigation then pending in this court entitled Nathan M. Shippee, Plaintiff, against Mohawk Airlines, Inc. The original deposition was not docketed because that was the one that is here and it bears no stamp of the Clerk of the Court on Exhibit 319 which appears to be the ribbon copy and the one that bears Mr. Shippee's signature.

This action was pending in this court under docket number 64 Civ 2105. A stipulation of discontinuation of this litigation was filed December 4, 1967. The Clerk's office has accordingly sent that file to the warehouse of the United States Archives, in Bayonne, New Jersey.

I will just state what I think all of us ought to recognize. A litigant is not supposed to blow hot and cold in a lawsuit.

MR.FARRELL: Your Honor --

THE COURT: You don't have to answer.

MR. FARRELL: I have plenty to answer on redirect.

THE COURT: You better read this exhibit, D-319.

MR. FARRELL: I have.

THE COURT: You attorneys better stay in friendly communication with each other. I think I have said enough.

We will be in recess.

(Luncheon recess.)

AFTERNOON SESSION

(1.45 p.m.)

N A T H A N S H I P P E E , resumed.

CROSS EXAMINATION (Continued)

BY MR. MacCRATE:

Q Mr. Shippee, in August of 1971 do you recall being asked the reasons for reducing the percentage participation of Robert B. Young from 25 per cent in January of 1965 to a suggested zero in October of 1966?

A Yes, I do.

Q Do you recall answering at that time "Unkown"?

A No, I don't.

Q I show you Plaintiff's answers to defendant's amended interrogatories No. 26-J and K which are dated August 24, 1971.

I ask you if that refreshes your recollection as to the answer given at that time?

A Could I also see the Exhibit 55 which was part of the answer?

Q Does this refresh your recollection that you were asked that question and gave that answer at the time that you did not know the reason?

A It refreshes my recollection of the answer but refers to an an exhibit which also affected my answer and

I would like to look at the exhibit.

Q Can you answer my --

MR. MARKS: I think the witness is entitled to see the exhibit that the interrogatory refers to.

THE COURT: I think it is incorporated by reference.

What is the correct number of the document? Is it in evidence in this case?

MR. MacCRATE: Yes, with a new number, your Honor. The interrogatory uses the pretrial number.

(Defendant's Exhibit 322 was marked for identification.)

MR. FARRELL: It is Plaintiff's Exhibit 201.

Q Mr. Shippee, I show you a copy of Plaintiff's Exhibit 201 and ask you if that doesn't refresh your recollection that you were asked the question as to the reasons and you replied "Unknown".

A This has no reference to Mr. Anderson.

Could I read it?

Q The interrogatory, Mr. Shippee, relates to the reasons for reducing the percentage participation of Robert B. Anderson from 25 per cent in January of 1965 to a suggested zero in October 1966. There is no reference in the letter to Robert Anderson, is there?

A I presume the answer refers to the letter and there was no reference to Mr. Anderson so I don't know how you made the connection.

THE COURT: I may be able to clarify it. As I understand it there is only a total of 70 per cent in the letter of October 4, 1966. There is 30 per cent not mentioned.

MR. FARRELL: No, it is 15 per cent each for Shippee, Willey and Young.

THE COURT: Then it comes to 100.

MR. FARRELL: It does.

THE COURT: The inference being that Mr. Anderson was zero.

MR. FARRELL: That is right.

A Yes, I know that he disassociated himself from any reimbursement that might arise out of the claim but those questions were directed in an interrogatory to this letter and that is the reason unknown might have been given as the answer I have to assume.

Q Didn't you also answer that you didn't know the reason why you were suggesting Mr. Willey's percentage be reduced from 25 per cent to 15 per cent?

A This refers to interest in a suit, not the sharing of equities and this was establishing sort of an

area for consideration and a subsequent letter said that Mr. Wright didn't want any interest in a suit but sought of set aside 5 per cent in case we did want to reimburse him later.

I was trying to answer in that as to the evidence of the interest in this suit, not changing from a sharing of the equities.

Q What were the shares in this suit as you divvied them up?

A There were no shares in a suit, proposed shares in the equities.

Q What percentage interest did you assign with respect to any recovery in this suit, Mr. Shippee?

A I suggested --

MR. FARRELL: Your Honor, I object to that because he didn't assign it. Assign is a legal word.

THE COURT: I will sustain the objection to the use of the word assigned. If he wants to say attribute or some --

MR. FARRELL: Proposed I think.

A I proposed 50 per cent for Prudential Oil Corporation, 15 per cent each for Shippee and Willey and 5 per cent for Will Wright although I had no authority for Mr. Wright to include him in any interest for the purpose

of a suit.

Q Which Prudential Oil Company were you talking about in October 1966?

A I believe this would have been Prudential Oil Corporation of New York. On or about that time it was formed as a subsidiary of Prudential Oil Corporation, a Delaware corporation, which became Prudential Funds, Inc.

Q You proposed in the first week in October of 1966 a division of 50 per cent to Prudential Oil of New York, 15 per cent to Shippee, 15 per cent to Willey and 15 per cent to Young and 5 per cent to Wright, adding up to 100 per cent, is that right ?

MR. FARRELL: Your Honor -- wait a minute before you answer. I have an objection and I want the next sentence of the letter read.

THE COURT: The letter is already in evidence.

MR. FARRELL: No, it is not.

THE COURT: 201 is not in evidence?

MR. FARRELL: No, your Honor.

THE COURT: All right, I will sustain the objection and require that the question be reframed.

Q You made a proposal, did you not, in the first week of October 1966 that there would be a division of 50 per cent to Prudential, 15 per cent to Shippee, 15 per cent

to Willey and 15 per cent to Young and 5 per cent to Wright, did you not?

MR. FARRELL: Objection.

THE COURT: Sustained.

Q Did you make a suggestion in October of 1966 that there would be a division of the interest in any recovery in the suit against Phillips among Prudential, Shippee, Willey, Young and Wright?

MR. FARRELL: Objection.

THE COURT: I think this question is permissible. The witness may answer.

A Yes.

Q What was the division that you proposed?

A 65 per cent for Prudential, none for Shippe, 15 per cent for Willey, 15 per cent for Young and 5 per cent reserved for Mr. Wright should he change his mind.

Q Thereafter did you reach agreement as to just what the percentages would be?

A No, we never did.

Q Mr. Shippee, about three weeks before you testified in the Mohawk case there was a public announcement of the approval of the quota for the Phillips project, was there not?

A Yes, there was.

Q Did you write to Mr. Learned at that time?

A I did.

Q Did you say to Mr. Learned that you would now like to accept the offer of his letter of November 13, 1962?

A In relation to a satellite plant, yes.

Q Had you ever prior to November 13, 1962 written a letter to Mr. Learned accepting any offer of November 13, 1962?

A No.

THE COURT: Could I have the question read back?

MR. MacCRATE: I misspoke, it should have been --

THE COURT: Reframe the question.

Q Did you at any time prior to December 1965 write to Mr. Learned accepting any offer from him of November 13, 1962?

A I received the letter from Mr. Anderson. I accepted it from Mr. Anderson, advised him. He accepted it.

Q Is it your testimony that you received Mr. Learned's letter of November 13, 1962 handed to you by Mr. Anderson?

A No. The contents of the letter were the result of his telephone call and I accepted the contents of the letter by telling Mr. Anderson.

ke 2 pm.

jplt 1 Shippee-cross

Q But you never wrote a letter prior to December 13, 1965, accepting any offer of November 13, 1962, did you?

A I made no reference to that letter by any letter of mine to Mr. Learned subsequently.

Q After executing the deposition in the Mohawk case on the 28th of February, 1966 --

A It may have been the 18th.

Q Your recollection is better than mine, Mr. Shippee.

A I just read it.

Q It is February the 18th, 1966.

After you executed the deposition, did you thereafter offer Mr. Anderson a participation in a suit against Phillips?

A I'm trying to remember the dates when you asked me the question. I believe it had been only just before that that Mr. Johnson had told us that Phillips recognized no part of our participation in the project. So this was immediately subsequent to that. At all times Mr. Anderson cautioned against taking any action against Phillips and he advised me he would never participate in and I never asked or offered it to him. He was always the peacemaker.

Q Did you suggest that he join in an action with you against Phillips?

A In a memo I outlined our position to him and asked him if he would like to join with us. He counseled us against it.

Q You were proposing at that time to sue for possession of the quota, is that right?

A Not at that time. I think what I just described came later, perhaps two or three months later. This now is February 18th. It was only February 16th that Mr. Johnson advised us that he would not -- his organization had advised him to tell us that they did recognize that we hadn't played any part in the project.

Q Mr. Shippee, I show you Plaintiff's Exhibit 194 and invite your attention to the first paragraph and ask you if that doesn't refresh your recollection as to the--

A Dated March 21st. That would be subsequent. That would refresh my recollection as I testified.

Q And that you were contemplating a suit against Phillips for possession of the quota?

A That was more than a month later, yes.

Q And then some eighteen months later, the complaint in this suit was filed, in September of 1967, is that correct?

A I believe that's correct.

MR. MacCRATE: I have no further questions, your Honor.

THE COURT: Cross examination is concluded?

MR. MacCRATE: It is, your Honor.

MR. FARRELL: I have some redirect, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Shippee, do you recall the meeting in early July, 1963 with Mr. Anderson and Mr. Chapman and Mr. Young?

A I do.

Q Is it your testimony that that meeting was July 1st or 2nd, 1970 -- 1963?

A Upon seeing the newspaper account of the air crash, it was the day before the air crash, which was July 1, 1963 in Mr. Anderson's office in New York City.

Q The next day you suffered the air crash?

A I did.

Q Tell us about the crash, Mr. Shippee, were there many people killed?

A Yes.

THE COURT: I think we heard all this. It was a bad crash. I'm not going to take anything about the crash. He was in the crash, and he survived, other people were killed. We had that the first day of the trial, Mr. Farrell. No argument about how many other people were killed in the crash, whether it was one hundred or two hundred.

MR. FARRELL: May I go ahead with the treatment, your Honor?

THE COURT: Yes, certainly. The record already shows there was a crash and he was in the crash and some people were killed.

Q Mr. Shippee, were you treated by a doctor thereafter?

A Yes.

Q And thereafter did you return to work?

A Yes.

Q Spend a full day at work?

A No.

Q Did you spend part time?

A Yes. I would take a long midday rest at a hotel room approximately two, two and a half hours, in the middle of the day.

Q How long did this continue?

A Through the summer and early fall of 1963.

Q During that period, were you doing any work on any matter other than the work on the petrochemical project?

A Yes.

Q What were you doing?

A I would generally spend the morning at Inpak Systems. I would spend the afternoon at Rockefeller Plaza at Prudential Oil.

Q Now, Mr. Shippee, at the time you gave this deposition in this lawsuit, Defendant's Exhibit 319 --

THE COURT: When you say "this lawsuit," --

MR. FARRELL: Shippee against Mohawk Airlines, Defendant's 319.

Q Did you know that Mr. Anderson had a retainer agreement with Phillips to bring in new projects?

A No.

Q At the time you brought the lawsuit -- at the time you testified in Defendant's Exhibit 319, Mr. Shippee, did you know that Phillips had prepared a brochure which contained sentences, and I'll read one of them to you -- that Phillips had a brochure which said:

"Report in Brief. The purpose of this report is to outline the project for a petrochemical core industry as an essential part of the economic development

of Puerto Rico and to request an oil import allocation to establish this new industry."

Where your report of June 1963 had precisely the same sentence, did you know that?

A No.

Q Did you know that Phillips had a brochure dated January, 1964, which said and I quote:

"The economy of Puerto Rico will benefit by the establishment of a company whose express purpose is the development of a petrochemical industry."

Whereas, your brochure of June 1963 had precisely the same sentence.

A No.

Q Did you know in fact that Phillips had prepared the brochure of January, 1964 which had been previously introduced into evidence here?

A No.

Q Did you know that Phillips had taken a copy of the June, 1963 brochure and put its own cover on?

A No.

MR. FARRELL: Your Honor, I am going to introduce that right now. Can we get that?

MR. MacCRATE: Mr. Farrell, I object to counsel's statement. There is no evidence --

THE COURT: Whatever he is going to produce it for or not depends first on whether there is any objection and second, on what ruling I make on the objection that one has taken.

I think the jury understands that.

MR. FARRELL: I offer Exhibit 219.

MR. MacCRATE: No foundation. Objection.

THE COURT: Wait just a moment. I will excuse the jury and rule on the objection.

Members of the jury, would you withdraw to the jury room, please?

(Jury left the courtroom.)

THE COURT: At what page did we discuss this exhibit, 219, before?

MR. FARRELL: We have not, your Honor.

THE COURT: We did not?

MR. FARRELL: No, that's a new one.

MR. MacCRATE: Completely new. There's nothing been said heretofore about it. What is described is redirect examination --

MR. FARRELL: It is in the pretrial order.

THE COURT: What page?

MR. FARRELL: It would be on the page with all the brochures, I don't know the exact page.

MR. MARKS: Page 82, previously marked PX 626.

MR. FARRELL: Now, your Honor, with respect to the foundation --

THE COURT: If the admissibility of it or the genuineness of it is covered by the pretrial order, you don't have to pursue it any further. If it is relevant to the case, then just refer me to the paragraph in here and I will take it on the faith of the pretrial order.

MR. MacCRATE: It is being offered at this time, your Honor, as a particular document that has a particular role and there is no testimony of which I am aware that links this particular document to that particular role.

THE COURT: What is the particular role to which you have reference in your last statement?

MR. MacCRATE: This is identified by Mr. Farrell as a document that apparently he is suggesting was delivered by a particular person at a particular time to Phillips.

THE COURT: To Phillips or is it a document which Phillips delivered to somebody else? We're talking about 219 now? What is your contention?

MR. MacCRATE: 219 comes out of the Phillips

files and it is lost to antiquity how it arrived in those files.

MR. FARRELL: Your Honor, I want to point out it wasn't so lost in antiquity. Because after an exchange of correspondence where Mr. MacCrate and I perhaps weren't as polite as we usually are, it did turn out that it had been turned up by Phillips at or about the time that this lawsuit was commenced and had been held by Mr. MacCrate's office until it was produced in May of 1973.

MR. MacCRATE: I don't think that's a fair representation.

THE COURT: This document on its face relates to this project, you all agree to that?

This document was found in Phillips' files. The question I am faced with is simply this:

What other authentication is there as to who prepared it or after they prepared it, what they did with it. If I have that, then I would rely on the pretrial order which is not worded as clearly as I would like to see it and I don't mean to criticize the work of the magistrate or of counsel. I have a 113-page pretrial order in this case which I think is the largest I have ever seen in this court, and yet it really doesn't resolve a lot of questions.

MR. FARRELL: Your Honor, let me read to you a

paragraph --

THE COURT: Let me put it simply. If you have to make a foundation for this document, then it is not properly admissible in the redirect examination of this witness. If you don't have to create a foundation for it because of provisions in the pretrial order, then you can offer it in evidence at any time in the trial that you like. You will have to read depositions to make a foundation.

MR.FARRELL: No. I don't. This is my point. This was delivered to us with a letter from Mr. Timbers, who was then Mr. MacCrate's associate, with a letter of May 3rd. It was not specifically mentioned in that letter. However, on May 4th, 1973, I wrote to Mr. Timbers and I said we were particularly troubled to find in this mass of papers a copy of Mr. Shippee's critical report of June, 1963, which no Phillips witness to date has acknowledged ever seeing. That is that report.

At that point Mr. MacCrate wrote back and said I was being vicious.

MR. MARKS: We inquired of them.

MR. FARRELL: There was a further exchange of letters. The final letter from Mr. MacCrate on the subject was "With respect to the copy of the request for oil import

quota dated June 19, 1963 which we included prior to the Van Hyning deposition, we are not aware that either you or your predecessor counsel ever specifically included a request for the production of this document."

I will show you our demand for documents if necessary.

"It was voluntarily included by us in the recent production of possible claim by you of suppliers at a later time."

The document is in no sense a recent discovery by us. It was first obtained by us in defendant's office in late 1967 or early '68 when we initially investigated the matter.

If that doesn't lay a foundation, I don't know what it does. That's Mr. MacCrate. He signed the letter.

THE COURT: What is the foundation? This particular paper was in the files of Phillips prior to the commencement of this lawsuit.

MR. FARRELL: That's right.

THE COURT: And has to do with this project.

MR. FARRELL: Right.

THE COURT: What do you propose to ask this witness on re-examination?

MR. FARRELL: I am asking him if

he knew they had it.

THE COURT: What difference does it possibly --

MR. FARRELL: It makes a lot of difference, your Honor. Because one of the points --

THE COURT: I would really like to know that and I think I am entitled to ask you in such a fashion that your testimony won't suggest any testimony to any witness in this case.

MR. FARRELL: Do you want Mr. Shippee to step out?

THE COURT: Mr. Shippee has a right to stay in the courtroom. You may approach the side bar.

(At the side bar.)

THE COURT: I am inclined to think this document is admissible but I just don't see the significance of this line of questioning at all. You're asking him whether at the time he gave the testimony in the litigation he personally commenced against Mohawk.

MR. FARRELL: I don't think he knew how good a case he had. He didn't know that he copied this brochure and he didn't know anything about these documents.

THE COURT: Whether he knew or didn't know, did not give him a license to falsify either in this litigation or in the Mohawk Airlines litigation. I view his

testimony in these two lawsuits as inconsistent to the point that they cannot be reconciled.

MR. FARRELL: Your Honor, I must agree with you.

THE COURT: That's why I asked you what I asked this morning.

MR. FARRELL: I understand that and I think his testimony in the Mohawk Airlines case was clearly puffed in order to increase his claim for damages. I have no question about that. I might also say it happens every day.

THE COURT: You can't say that to me, Mr. Farrell. You can't say that to me.

MR. FARRELL: I'm not justifying it. I'm simply saying it. At that point he did not know and part of what Mr. MacCrate -- the point Mr. MacCrate was making was that Mr. Shippee had said that he had taken a much smaller amount of loss than we are claiming in this suit.

He did not know at that time what it was that Phillips had done. He didn't have a copy of these brochures. He didn't know Anderson had a retainer with Phillips. I think that goes directly to the points that were being made. That is one of the points.

THE COURT: What's the other one?

MR. FARRELL: The other one, you say the testimony was inconsistent.

THE COURT: Well, that's the point that Mr. MacCrate was making.

MR. FARRELL: No, I think not entirely. He was making also the point that Mr. Shippee estimated the amount of his damages as much lower than they are here.

THE COURT: There is nothing much to that.

The other point is significant. At this time I will take a brief recess.

(Recess.)

(The following took place in the robing room.)

THE COURT: Gentlemen, we have been discussing here and it occurs to me that it might be bettter to let the jury go for the balance of the day.

Now, if there is no objection I will simply walk in the jury room and tell the jurors to return at 10.30. Is that agreeable?

MR. FARRELL: Agreeable, yes.

MR. MacCRATE: Agreeable, yes, your Honor.

THE COURT: Gentlemen, you may walk into the jury room with me while I instruct the jurors to return at 10.30 tomorrow morning.

(Adjourned to Friday, January 9, 1976, at 10.30 a.m.)

---